STATE BANKING IN THE UNITED STATES SINCE THE PASSAGE OF THE NATIONAL BANK ACT

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STATE BANKING IN THE UNITED STATES SINCE THE PASSAGE OF THE NATIONAL BANK ACT

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PREFACE

The following essay is a study of state banking in the United States as it has grown up since the Civil War. This movement may be viewed from two sides. In the one aspect it is a legal and in the other an economic phenomenon. Since the two are closely related, it has been impossible to keep their treatment entirely separate at all points, but in the main the first part of the work—State Bank Legislation—deals with the evolution of the present state banking laws. As it would have been wearisome and unprofitable to have described this legislation in all its details, only the main threads have been followed. It is believed, however, that the regulations concerning incorporation, capital, real estate loans, stockholders' liability, and supervision comprise those parts of the laws which are fundamental. While there are provisions on other points, they are not basic. In the concluding chapter of the first part, the statistics of state bank failures have been examined as furnishing the only practicable test of the efficiency of state bank regulation.

In the second part of the work—The State Bank as a Credit Agency—attention has been given to the economic side of the movement, to the causes which have produced a large expansion of state banking at the expense of other institutions for supplying credit. Throughout the earlier part of my work, I received constant aid from the late Dr. Sidney Sherwood. I wish also to express my thanks to Dr. J. H. Hollander who kindly read my manuscript and made many helpful suggestions.

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STATE BANKING IN THE UNITED STATES SINCE THE PASSAGE OF THE NATIONAL BANK ACT

PART I.—STATE BANK LEGISLATION

INTRODUCTION

The term "state bank" has been used in the United States in many different senses. But whatever the variance in meaning, such banks have always had one common characteristic—incorporation under state authority. "A state bank," says Morse, "is one organized under a state law or a charter granted by the legislature of a state and derives its power from state sovereignty."[1] In recent years, the "state banks" have sometimes been confused with private banks. This has come about from the fact that in some states, the same requirements are made of incorporated and unincorporated banks. Since both classes of banks are equally subject to state regulation they are all called "state banks."

An unincorporated bank, however, is a private bank. The definition given in the Kentucky Statutes correctly represents present usage. "Private bankers," runs the law, "are those who without being incorporated carry on the business of banking."[2] Incorporation is an important feature and it is necessary to carefully distinguish the two classes. A failure to do this has sometimes caused erroneous statements.[3]

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[1] Morse on Banks and Banking, 3d ed., sec. 16.
[2] Laws of Ky., 1893, chap. 171, sec. 32.
[3] See pp. 66, 67.

Not every incorporated bank, however, is a "state bank" in the sense in which the term will be used hereafter. Stock savings banks and loan and trust companies are capitalized corporations erected by state law, but it is only with banks of discount and deposit that this essay deals.[4] It is to be admitted that in many states, savings banks with a capital stock as well as trust companies are included in "state banks" in popular and even, in some cases, in official language, but there seems a growing disposition to classify these separately and to restrict the term "state bank" to banks of discount and deposit. Further justification of this use may be found in the fact that four-fifths of the capitalized banks incorporated under state laws are of this character, and it seems permissible to use the term without qualification to express the most numerous class. "State banks" then as the expression is used in the following pages, are banks of discount and deposit (as distinguished from savings banks and trust companies) incorporated under state sovereignty (in contrast with private banks which are unincorporated and with national banks, which are formed under the national law).

In 1860 there were in the United States 1562 state banks. Owing to the repressive influence of the national bank act, hastened in its effect by the ten per cent tax on state bank notes, the number by 1868 had fallen to 247. Corresponding to this decline in numbers and importance, was the cessation of state banking legislation. The state banking systems became moribund; the old laws regulating banks of issue were generally swept away by code revisions, or remained unchanged on the statute books.

The antebellum laws had been aimed solely at securing the safety of the bank note; the depositor was regarded as amply able to care for himself, just as the bank-note holder had been considered earlier when note issuing was

[4] The separation of the statistics of stock savings banks and state banks has not been possible in all cases. See Appendix, p. 112.

a right at the common law. It is true that the depositor was protected by many of the regulations under which banks were placed, but this was purely incidental to the main purpose of the laws. In fact, by giving the note holder a prior lien on assets, the depositor's security was somewhat impaired. The feeling that note issue alone needed governmental oversight persisted for a considerable time after 1868. The national banks had a monopoly of bank circulation, and the regulation of state banks was considered needless after the prime occasion for it had been taken away. As the importance of note issue decreased, and the deposit function became prominent, it began to be apparent that governmental regulation of banks was of value in protecting depositors. It is a far cry from the Michigan bank act of 1857 to that of 1887, but the national banking law has undergone the same change of purpose. The Comptroller of the Currency, in his report for 1898, speaking of proposed reforms in the national banking act, says: "In their present form, they seem to ignore the interests of bank depositors with whose protection the Comptroller is peculiarly charged,"[8] and again, "it is the belief of the Comptroller that the proposed preference of the note holder over the depositor . . . . is not only inherently wrong and unjustified by any grounds of public policy."[9] And yet, the very law by which his office is created recognizes the superior right of the note holder, and his title indicates the view held of the duty of his office when it was established.

For a considerable period the legislatures left the state banks free to make their own way. In some states, old laws unrepealed and adapted only to the needs of banks of issue, somewhat hampered their growth, but in the main,

[8] Report of the Comptroller of the Currency, 1898, Vol. I, p. XII.

[9] It is not intended, of course, to express any opinion as to the correctness of this view. It is simply pointed out that the present view of the aim of the national banking act varies widely from that held when it was enacted.

they were left with no interference. As late as 1892, Mr. Stimson said, "It seems unnecessary to incorporate the state banking laws in this edition. Nearly all the states, except the newer states and territories, have special chapters in their corporation acts concerning banks and moneyed institutions, but these chapters are usually of old date, and have practically been superseded for so long a time by the national banking laws that they have become obsolete in use and form."[7] A more careful examination would have shown a decided movement in the years immediately preceding 1892. Since that time, legislation has been abundant. There are very few states which have failed, in the last ten years, to do something in the way of enacting banking laws, and since the power of issue is taken away, the purpose of these laws, so far as they have dealt with present conditions, has uniformly been the better protection of depositors.[8] At present, the body of

[7] American Statute Law, Vol. II, sec. 9500, p. 572.

[8] It is of interest to note that in two states at least (Nebraska and Kansas) the question has recently been raised whether deposits cannot be secured by a guarantee fund. Just as in the case of note issue, there has been in many countries a transference of credit from the individual bank to the wider credit of a system of united banks, so it is thought that if the security of deposits can be based on the credit of many institutions, a larger number of depositors will be obtained. The experiment would be interesting, but its success is doubtful. There seems, despite their fundamental similarity, to be a substantial difference in the parts which credit plays in the bank note and in the deposit. The tendency of modern legislation is to make bank money equivalent to specie, so far as credit is concerned, by resting it either on the credit of one large state institution, or else on the joint liability of a number of banks. It seems probable, on the other hand, that individual credit is still of considerable importance in the matter of deposits, and that this is a safeguard. A depositor does not place his money in a bank, as a general rule, simply because it is a state or national bank, but because he knows something of that particular bank. It may be admitted that the system acquires relatively more and more importance as regulation progresses, and it is quite conceivable that deposits may some day be made on the basis of the credit of the system. It is undoubtedly true that many deposits are so made at present, but the number made on individual credit,

state banking laws is large in bulk and important in practice. It is this legislation, its growth and characteristics, its causes and purposes which it is the aim of the present essay to describe.

In the evolution of the state banking laws, four elements have actively entered. While each has acted continuously, their influence has not been equal at all times:

(1) The national banking act has, especially in the earlier stages, been the model, to which the states have conformed their laws. It represented the only body of legislation on the subject, which was well known to the people. With its provisions, restrictions, and methods of operation, they were well acquainted, and it was natural that when the states adopted the policy of regulating banks of discount and deposit, they should follow closely its general plan.

(2) It was found, however, that the great majority of the state banks were the product of economic needs which the national banks did not satisfy, and it was necessary to make such changes in the national act as were required by these conditions.

(3) In the states, there was already a mass of laws regarding corporations in general. Banks have not been differentiated as fully from other corporations as the adoption of the national bank act in its entirety would have required. In some important respects, the influence of the existing corporation law has been paramount, while in others, it has yielded more or less fully.

(4) Recently there has grown up a strong interstate influence. States about to legislate on the subject look to other states where similar economic conditions prevail, and where experience has already been had. The banking laws of Kansas have been appreciably affected by the

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or to be more exact, not made because of lack of credit, is large enough to afford an important check on bankers. To guarantee deposits would result in giving the banker who is reckless a freer rein since public opinion would no longer be feared.

older legislation in Missouri, and Oklahoma has adopted to a considerable extent the methods of Kansas. Certain important improvements, adopted by one state and found to work well in practice, have been borrowed by others. This movement is as yet in its infancy, but it promises well. It may be said that at present in the systems which have been longer established, the influence of the laws of other states is far more important than any other factor. The national bank act has been already utilized as far as circumstances seem to allow, and in solving the remaining problems, nothing is so valuable as the experience of other states working under like conditions for a similar end.

CHAPTER I

INCORPORATION

The power to charter banking, as well as other corporations, is inherent in the legislatures of the various states, and is limited only by constitutional provisions. Many of the state constitutions, at one time or another, have prohibited charters for banking, but at the present time, in only one state is the legislature so restrained. The Texas Constitution of 1876, which is still in force, provides that "No corporate body shall hereafter be created, renewed, or extended with banking or discounting privileges."[1] While Texas is unique among the states in its absolute prohibition of state banks,[2] there are in many of the state constitutions, provisions regulating the manner in which the legislature may exercise its prerogative.

In the twenty years prior to the Civil War, the principle of the referendum was applied to banking charters in nearly all the states of the Middle West. Iowa, Wisconsin, Illinois, Michigan, Ohio, and Kansas, in quick succession, inserted in their constitutions clauses requiring banking laws to be submitted to popular vote for ratification.[3]

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[1] Constitution of Texas, 1876, Art. VII, sec. 30. The policy of Texas, from the beginning of its history as a state, has been almost invariably opposed to banking corporations. The constitutions of 1845, 1861 and 1866 contain the clause cited above. The constitution of 1868 did not prohibit bank charters, and a small number were granted during the period 1868-1876.

[2] It has sometimes been stated that Oregon should be placed with Texas in this respect, and Art. XI, sec. 1, of its constitution, seems capable of this construction, but the Supreme Court of Oregon, in the case of State ex rel. Hibernian Savings Bank, 8 Or. 396, after an examination of the "Journal of the Constitutional Convention," held that only banks of issue were prohibited.

[3] Iowa (1846), Art. VIII, sec. 5; Wis. (1848), Art. XI, secs. 4, 5;

In 1875, the same provision was adopted in Missouri,[4] so that, at the present time, it is to be found in the constitutions of seven states. But its force has been much weakened by the interpretation of the courts, several of which have held that the provision applies only to laws concerning banks of issue, and that legislative acts incorporating banks of discount and deposit need not be submitted to the vote of the people.[5] In Michigan, Illinois,[6] and Wisconsin, acts for the incorporation of banks of any kind must still be approved by the popular vote. Only the general banking law is subject to popular sanction in Michigan, but in Wisconsin[7] and Illinois,[8] every amendment of the banking laws must be so ratified. These provisions were intended to provide against conditions which no longer exist, and whatever their value may have been as a protection against the evils of an over issue of bank notes, their only effect at present is to render the adaptation of the banking laws to the changed needs of the present day slow and difficult.[9]

Of far more importance to the development of state banking in recent years than the referendum requirements, has been the gradual increase of general incorporation laws at the expense of special charters. It is needless to

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Mich. (1850), Art. XV, sec. 2; Ill. (1848), Art. X, sec. 5; Ohio (1851), Art. XIII, sec. 7; Kansas (1859), Art. XIII, sec. 8.

[4] Constitution of Missouri (1875), Art. XII, sec. 26.

[5] Decisions holding referendum provisions applicable only to banks of issue: Kansas, Pope vs. Capitol Bank, 20 Kansas, 440; Iowa, 70, N. W., 752; Ohio, 42, O. S., 617. In Missouri, the words of the constitution themselves restrict the application to banks of issue.

[6] It was held in People vs. Loewenthal, 93 Ill., 191, that the referendum clause in the constitution of 1848 applied only to banks of issue, but the constitution adopted in 1870 extended the principle to all incorporated banks. (Constitution of Illinois, 1870, Art. XI, sec. 5.) This was interpreted in Reed vs. People, 125, Ill., 592.

[7] Rusk vs. Van Nostrand, 21 Wis., 159; Van Steenwyck vs. Sackett, 17 Wis., 645.

[8] Reed vs. People, cited above.

[9] See p. 27.

say that this movement has not been confined to banking corporations. In fact, banking has been somewhat later than other business pursuits to receive freedom of incorporation. Banking charters were granted at first in all the thirteen original states only by special acts. Early in this century, the substitution of general incorporation laws for special charters in some kinds of business became common in the New England and Eastern States,[10] but general incorporation laws for banking were longer delayed.[11] In his report for 1849, Hon. Millard Fillmore, Comptroller of the State of New York, thus described the circumstances which led to the passage of the general incorporation law for banks: "The practice of granting exclusive privileges to particular individuals invited competition for these legislative favors. They were soon regarded as a part of the spoils belonging to the victorious party and were dealt out as rewards for partisan services. This practise became so shameless and corrupt that it could be endured no longer and in 1838, the legislature sought a remedy in the general banking law." According to the provisions of the Constitution of New York adopted in 1846, charters were to be granted under general laws, "except where in the judgment of the legislature the objects of the corporation cannot be obtained under general laws,"[12] but the desirability of incorporating banks by special charters was not left to the judgment of the legislature; they were in all cases to be formed under general laws.[13] As long as banking charters could be granted only to approved persons, who were able to maintain heavy specie reserves, there was difficulty in applying the general

[10] "Political Essays," by Simeon E. Baldwin, p. 119.

[11] For general treatment of ante-bellum movement toward general incorporation laws for banks, see "Philosophy of the History of Bank Currency in the United States," by Theodore Gilman, Banker's Magazine, Vol. 50, p. 347.

[12] Constitution of New York (1846), Art. VIII, sec. 1.

[13] Constitution of New York (1846), Art. VIII, sec. 4.

incorporation idea to banks but the bond deposit gave an automatic method of securing the safety of the notes and enabled banking to become free.[14]

The states of the Middle West followed the lead of New York, and "freedom of incorporation" became their settled policy,[15] but in nearly all of them, the constitution permitted also the establishment of a state bank with branches. With the extinction of state bank currency, however, the general law in all these states became and continues to be the sole form of bank incorporation.[16] The policy of general laws became the fixed rule of the West, and as each new state was added to the Union, it placed in its constitution clauses prohibiting the formation of corporations under special act, and giving the legislature the right to confer corporate privileges by general law.[17]

In the other sections of the United States, a very different state of affairs has existed. In the New England, Eastern, and Southern States,[18] down to the time of the Civil War, the system of special charters was almost universal. Free banking on bond deposit had been adopted in many

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[14] Michigan, in 1837, had inaugurated a system of "free" banks with a circulation based on real estate. See "Banking in Michigan," by Alpheus Fitch. Senate Ex. Doc. 38, pt. 1, 52 Cong., 2d sess.

[15] Mich. (1850), Art. XV, sec. 1; Ind. (1851), sec. 201; Ohio (1851), Art. XIII, sec. 1; Kansas (1855), Art. XIII, sec. 1; Wis. (1848), Art. XI, secs. 4 and 5; Iowa (1846), Art. VIII, sec. 1; Minn. (1857), Art. X, sec. 2.

[16] In Illinois, special charters were used to a slight extent before 1870, when the constitution required general laws. Constitution of Illinois (1870), Art. XI, sec. 1; vide P. & Chicago Gas Trust Co., 130, Ill., 268.

[17] Cal. (1849), Art. IV, sec. 31; Nev. (1864), Art. VIII, sec. 1; Neb. (1866), Corp's, sec. 1; Col. (1876), Art. XV, secs. 2, 3; N. D. (1889), sec. 131; S. D. (1889), sec. 191; Mont. (1889), Art. XV, secs. 2, 3; Wyo. (1890), Art. X, sec. 1; Wash. (1889), Art. XII, sec. 1; Or. (1857), Art. XI, sec. 2; Utah (1895), Art. XII, sec. 1.

[18] The nomenclature of the groups of states followed in this essay is that used by the Comptroller of the Currency in his report for 1899; the states included in each group may be seen by a reference to the tables in the appendix.

of these states, but only in New York as an exclusive system. By the side of the specially chartered banks, the free banks played but an insignificant rôle, and when, by the imposition of the ten per cent tax on notes, no opportunity was left for the issue of currency, these states returned to the exclusive use of special charters.

In the New England States the system of special charters has held its ground, so far as banking is concerned.[19] This has been caused by the fact that the national banks have filled entirely the needs of this section. Very few banking charters have been granted in any of the New England States during the past thirty-five years. Banking corporations occupied an anomalous position in the Eastern States. While corporations for carrying on almost every other business might be organized under the general laws, it required a special act of the legislature to form an association for banking purposes.[20] The old free banking laws were retained in some of these states, but they were not suited to the needs of the banking business, and special charters were nearly always secured. The feeling for an assimilation of banking to other lines of business caused the prohibition of special charters in the Pennsylvania Constitution of 1875,[21] and in the New Jersey Constitution of the same year.[22] Maryland has a general law for the formation of banking corporations, but it is little used, and practically all banks are formed under special acts.[23] Delaware alone of this group retains the old form of incorporation as the sole means of securing a charter, its recent constitution expressly exempting banks

[19] Vermont permits the organization of banks under a general law, which is antebellum in its main outlines. In Massachusetts, also, banks may be organized under its old law, but the conditions are too onerous for banks simply of discount and deposit.

[20] New York, of course, was an exception.

[21] Art. III, sec. 7. [22] Art. IV, sec. 7, clause 11.

[23] The Maryland Constitution of 1867 permits the legislature to use its discretion in the matter of special acts of incorporation. Art. III, sec. 48.

from the corporations which may be formed under general laws."[24]

The same tendency, but slower in operation, may be observed in the Southern States. The agricultural interest has always been predominant in the South. Until quite recently, commercial and manufacturing industries have not been of importance, and in consequence freedom of incorporation has made but slow advance. Even ordinary business corporations were, in many of the states, chartered by special act nearly as late as the Civil War, and in only a few states were there general banking laws. Until the period of Reconstruction, special charters were not forbidden in the Southern State constitutions. The framers of the Reconstruction constitutions were familiar with the provisions—then in force in the Middle West—requiring corporations to be formed under general laws, and they attempted to make that the policy of the South. In many cases the clauses inserted with this aim were either so limited in application as to leave the hands of the legislature practically free, or they were omitted in the constitutions adopted somewhat later; but in Tennessee,[25] Arkansas,[26] and West Virginia,[27] they have remained in force. More recently, Louisiana,[28] Mississippi,[29] Kentucky,[30] and South Carolina[31] have, by constitutional provisions, adopted the general corporation act as the exclusive method of incorporation. An amendment to the constitution of Georgia, adopted in 1891, permits the General Assembly to incorporate banking companies by general act. While these changes did not affect, in most cases, other lines of business, they marked, in nearly all

[24] Constitution of Delaware (1897), Art. IX, sec. 1.
[25] Tenn. (1870), Art. XI, sec. 8.
[26] Ark. (1868), Art. V, sec. 48.
[27] W. Va. (1872), Art. XI, sec. 1.
[28] La. (1870), Art. 46; also (1898), Art. 49.
[29] Miss. (1890), sec. 178.
[30] Ky. (1891), sec. 59, subd. 17.
[31] S. C. (1895), Art. IX, sec. 9.

cases, a change in the method of granting banking charters.[32] Even in those states where special acts are still constitutionally possible, they are, with one exception, rarely used. Virginia, Florida, and Alabama all have free banking laws under which nearly all banks are incorporated. In North Carolina alone does the special charter hold entire possession of the field.

The net result of these changes has been a complete reversal of systems of bank incorporation in the Southern and Eastern States. Where, as late as 1870, special charters were the almost universal custom, at present only two states, Delaware and North Carolina, do not permit the formation of banks under general laws, and in only a few others, Virginia, Alabama, Florida, and Maryland, is the special act used with more or less frequency. The labor imposed on the legislatures by the increase in the number of applications for banking charters has been the most potent cause in bringing about this change.[33] There has also been at work the continually acting tendency toward assimilation of state constitutions.

Contemporaneously with the movement toward freedom of incorporation has gone what may be styled the differentiation of the "general incorporation law."[34] In nearly all the states, prior to the Civil War, there had grown up "general incorporation laws," under which, to use the ordinary phraseology, "associations for carrying on any lawful business" might be formed. Before 1860, banks

[32] Since 1885, banks may be incorporated by general act in S. C. Laws of S. C., 1885, XIX, 212.

[33] This is illustrated by the case of Georgia. The plan first adopted was the framing of a special charter, and then granting to all succeeding applicants the powers and imposing the liabilities and duties contained in it. Ga. Laws, 1891, p. 172.

[34] The "general incorporation law" has a technical meaning in American law. Previous to this, the term has been used in its larger sense in contradistinction to special charters, but henceforward it will be used in its stricter meaning of the body of law under which the great mass of corporations are formed in the American States.

were never formed in any of the states under the "general incorporation law"; special restrictions were always imposed, but these regulations related largely to the right of issue and its proper exercise. After the imposition of the ten per cent tax on state bank notes, it was apparently felt in many of the states that the business of banking could be left to individual enterprise without any special regulation. Consequently in many of the states the "general law" came to include banking in the lines of business for the conduct of which corporations might be formed. In some of the "free" banking states, the old provisions were retained unaltered, and in others, they were repealed and resort had to the "general incorporation law." The newer states in the West allowed banking corporations to be formed under the general law. While there were a few states which differentiated banking from other corporations before 1887, the movement may fairly be considered as having begun about that time. Since then in nearly all the states,[88] there has been a growing tendency to treat banking differently from other lines of business, and to recognize that it needs special regulation. This was undoubtedly caused by the increase in the number of banks about that time,[89] and the consequent attention which the subject received.

One difference between the national and the state laws concerning banking will be readily seen. In the states, the banking law is part of a larger whole; it simply embodies the differences which the legislature has seen fit to make between banking and other lines of business. The foundation on which the state banking laws rest is the general corporation law; as a general rule, therefore, the state laws are less exhaustive than the national, since it

[88] There still remain a few states having general laws, in which banks are under the same regulations in every respect as other lines of business. They are Arkansas, Idaho, Oregon, Nevada. In many others, the differentiation is slight.

[89] See p. 74.

is not necessary to legislate specially on points which are already satisfactorily covered in the general law. The national banking law, on the contrary, except for judicial interpretation of the common law governing corporations, is full and complete in itself. In order to understand the development and the present status of the state banking laws, reference must constantly be had to the principles of the "general incorporation law."

Three forms of incorporating state banks have been in use since 1865: (1) The special charter; (2) The undifferentiated general incorporation law; (3) The differentiated general incorporation law. While very few states have passed through all these, it is yet true that if we look at the country as a whole, we shall find each method predominant at a given time. From 1865 to 1875, the special charter was in use in most states, and from 1875 to 1887, the "general incorporation law" was the controlling type, and since then the differentiated incorporation act has become the almost universal form of bank incorporation. It is to be noted that the special charter and the "general incorporation act" were contemporaneous, springing from different social and political conditions. A high degree of regulation may be built up under special acts, as was the case in most of the states prior to 1860. The same thing may be observed in the Southern States. For example, North Carolina, while still keeping the special act, has a much higher degree of regulation than many states with freedom of banking incorporation. It is not therefore true that the stages described above represent a consecutive development; it is rather to be understood that it is into the last form that both the others directly transform themselves. Since, however, at the beginning of the present movement, the "general incorporation law" was the predominant type, especially in those sections where the influence of state banking has been greatest, it may be regarded as the starting point for the evolution of the present systems. Legislation is directed toward the cor-

rection of existing systems, and so the aim of the state laws may be comprehensively described as an attempt to amend "general incorporation laws" in those respects in which they have been found unsuited to the proper control of the banking business.

CHAPTER II

CAPITAL

The "general incorporation laws" have very elastic provisions as to the amount of capital required. The "general law" is designed to fill the needs of many classes of enterprises, varying widely in their needs for capital, and it has been the rule in the states to leave the size of the capital almost entirely to the discretion of the incorporators.[1] The special charter may be quite as liberal in its provisions with regard to capital as the "general law," but it is not likely to be so. No American legislature would be likely to grant a banking charter without requiring a capital, supposedly adequate to the needs of the corporation. Since the most glaring defect of the banks chartered under general acts was the absence, in many cases, of any proper capital, one reason may be seen why banking legislation has developed so much more rapidly in the West than in the South. While the system of special charters did not furnish sufficient safeguards for the banking business, it was in many respects, very much superior to the "general law," and especially was this true with respect to capital requirements.

As soon as the states began to pay attention to the regulation of the banking business, the question of bank capitalization received attention. The national bank act and the surviving antebellum laws in the Middle West had special requirements of this kind; in fact, some kind of capital requirement was recognized as the central point

[1] A large majority of the states require neither a minimum nor a maximum capital. In some, however, a small minimum, rarely exceeding $1000, is required. The maximum permitted is generally so large as not to be a question of importance in banking charters.

in any regulation of banking. The capital stock is a buffer interposed between losses, which the bank may suffer, and the bank's creditors. If there is no capital, losses may fall directly on the creditor, and the larger the capital stock, other things being equal, the less the likelihood of loss to the depositor.[2] Wherever any state regulation of banking has been attempted it has been the universal rule to enact that banking corporations shall have a certain minimum capital.

Amount of Required Capital.—At the present time, only a few states, the remains of a large number, Arkansas, Mississippi, Tennessee, South Carolina, Oregon, Arizona, Idaho, Nevada, New Mexico, and Virginia, have no special requirements as to the capital of banking companies. In these states, so far as capital is concerned, banks are on the same footing as other corporations. The determination of the amount of capital needed, rests entirely with the persons seeking incorporation, except that the Virginia "general incorporation law" requires a capital of at least $500.

The minimum capital requirement in the differentiated banking laws varies from $100,000 to $5000. These amounts have been determined in each state in one of three ways: (1) In the states which formerly had undifferentiated systems, banks generally established a minimum for themselves. For example, when California for the first time, in 1895, required a minimum, it was placed at $25,000, because, while there were a few banks operating with a smaller capital, there was no large class of such banks, and it was thought that no great injury would be done by debarring them. In Nebraska, on the contrary, the law of 1889 fixed $5000 as a minimum.[3] This was a necessity, because there were many banks with no

[2] This is not meant as a statement of the economic position of the capital of a bank; it is the view which the state systems of regulation take of capital stock.

[3] Laws of Nebraska (1889), chap. 37, sec. 1.

greater capital. Thus, these states have generally accepted a status established by economic conditions. (2) In those states which have passed from the use of special charters to differentiated laws, the minimum required has been about equal to the capital of the smallest banks formerly incorporated by special act. Here also the economic factor has dominated the situation. In both this and the first class, there has been little movement since the first placing of the minimum, and it is improbable that there will be any, unless changes should occur in economic conditions. (3) The minimum has been set in the last group in an entirely different way. As has been said before, certain states, in which "free banking" was most widely used before the war, retained their banking laws then in force, without lapsing into the use of "general incorporation laws." These states were Indiana, Illinois,[4] Ohio, Iowa, Minnesota, Michigan, Wisconsin, New York, Vermont, and Louisiana. The minimum requirement in none of these states was less than $25,000. In some of them, this has been lowered, but in others, it has remained rigidly at the same amount. As the need for small banks has sprung up, the old law has not changed so as to meet the situation fully. Probably the referendum provisions discussed above have given a fixity to the law in some states which it would not otherwise have possessed. There has also been undoubtedly a feeling against the incorporation of very small banks in some states. Evidence of the economic need for banks of small capital is afforded by the fact that in these states, and more especially in the ones having high minimum requirements, the number of private banks is very large.[5] The antebellum policy was to

[4] The case of Illinois has been somewhat exceptional. It alone of this group was able to use special charters, but only under the restriction of the referendum. Its present law, adopted in 1887 (Laws of Illinois, 1887, p. 89), followed the general trend of the Indiana law, which, passed in 1872-73, was practically the antebellum law remodelled. These states, while not strictly under the old law, are yet practically under its influence. [5] See p. 85.

give incorporation only to banks of issue, and it was believed that only banks of a certain size could properly perform that function. The question now is not whether small banks of discount and deposit shall exist—they are already in being. The point is whether there is any advantage in denying the right of incorporation to such institutions.[6] In Michigan,[7] Louisiana,[8] Minnesota,[9] and New York,[10] the old capital provisions have been reduced to meet this demand.

There is a wide difference in the minimum required in the various states, and the variation is to a considerable degree a sectional one. In none of the New England and Eastern States can the capital be less than $50,000, except in the case of New York. The $25,000 group begins with this state, and includes New York, Ohio, Indiana, and Illinois. In the Middle States, except in the case of Missouri, where special charters prevailed, capital before 1865 was never less than $25,000, and in Illinois and Michigan, it was $50,000. Ohio and Indiana have never seen fit to lower this minimum, but in Illinois it has been reduced to $25,000. This is still the nominal requirement in Wisconsin[11] and Iowa,[12] but in Wisconsin, since only $15,000 need be paid in, the minimum is lower for all practical purposes; in Iowa, savings banks may be formed with a capital of only $10,000. These banks, for the most part, carry on a commercial business. There has been an apparent reluctance to face the situation frankly, and state banks still seem connected in the legislative mind with note issue.[13] Minnesota and Missouri require a capital of only

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[6] See on this point, p. 87.

[7] Mich. (1887), Art. 205, sec. 1; also (1891), Feb. 26.

[8] La. (1882), chap. 80.

[9] Minn. (1887), chap. 63.

[10] N. Y., (1874), chap. 126; (1882), chap. 409, sec. 29; (1892), chap. 689.

[11] Wisconsin (1861), chap. 242, sec. 14.

[12] Iowa, 15 G. A., chap. 60, secs. 2, 3.

[13] The same thing was done in the period immediately after the war by Kansas and Missouri. Banks, to be known as savings banks, were chartered with a capital of $50,000, but only ten per

$10,000. Michigan until recently had a minimum of $15,000. So that the more westerly and northern of the Middle States require minimum capitals ranging from ten to fifteen thousand. The more distinctively agricultural states in the western group have the lowest capital requirements to be found in any of the states. In Kansas, Nebraska, North Dakota, South Dakota and Oklahoma, banks may be incorporated with capitals as low as $5000. The other states of the western group and the Pacific States do not permit, as a rule, a lower capitalization than $25,000.[14] In the South, the necessary capital is $15,000 in Georgia, Kentucky and Alabama.[15] In Louisiana, the minimum is still lower, being only $10,000, while in West Virginia, capital may be as small as $2,500, since only ten per cent is required to be paid in, the remainder being subject to the call of directors.

The United States may be divided, then, roughly into four great groups according to the capital which a bank must have in order to be incorporated under the state laws.

I. The New England and Eastern States, requiring, with the exception of New York, capitals of at least $50,000.

II. New York, Indiana, Illinois and Ohio, the Pacific States and Territories, and the less distinctively agricultural of the Western States, requiring $25,000.

III. The Middle States (except Indiana, Illinois and Ohio) and the Southern States, requiring $15,000 or $10,000.

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cent of capital had to be paid in at once. This was a recognition of the needs of incorporation, but the old idea that banks of issue alone were to be incorporated, forced the states to meet needs by roundabout means. The "savings banks" in both states were really commercial banks. The names of many banks in Missouri still reflect this transitional period.

[14] In Montana the minimum is $20,000. By an act passed in 1890 (chap. 31), banks may be formed with a capital as low as $10,000 in Wyoming.

[15] In Georgia and Alabama the minimum capital is $25,000, but only $15,000 need be paid in.

IV. The distinctively agricultural states of the western group, requiring only $5000.

The reason for the regulation of capital is, as has been said, that capital is regarded as a safety fund for the protection of the creditors; the larger the volume of business transacted by the bank, the greater the likelihood of a large loss. The attempt is made, therefore, to establish by law a relation between amount of business and capital. In the national bank act, the amount of capital required depends on the size of the place in which the bank is located. It is assumed that a bank in a place of 5000 inhabitants will be able to do a larger business than one in a smaller town. On account of the small size of the capital required in some states under the state laws, it has been thought expedient to carry this principle into minute details. Thus, in all the states with a $5000 minimum, except Kansas,[38] a regular scale, advancing by small sums, is prepared. For example, in Nebraska, towns with less than 1000 population may have state banks with a capital of $5,000; less than 1500, $10,000; less than 2000, $15,000. The general tendency has been toward refinement in the capital scale. Before the beginning of the present movement toward the improvement of the state banking systems, it was usual, in states where capital of a fixed amount was required, to have only one specified sum for places of any size, and this is still the rule in most cases where the capital requirement is high. There is much less tendency to discriminate in capital requirements when $50,000 or $25,000 is the minimum. Vermont, New Jersey, Pennsylvania, Indiana, West Virginia and Ohio make no distinctions. A minimum capital is fixed, and it is the same for large and small towns. The refined scales have arisen in three ways: (1) The uniform requirement was found unsuited to the needs of the state, since it was not low enough, and instead of making a lower uniform minimum,

[38] See below, p. 32.

banks were allowed to be formed with less capital in small places. This has been the case in Minnesota, Georgia, Michigan, Alabama, Louisiana and New York. (2) In some cases, in passing from the "general incorporation law" to a differentiated system, a very low uniform minimum was required, which was later found to be unsafe, and a differentiated scale adopted. This was the case in Oklahoma. (3) The "general incorporation law" having given rise to banks with capitals of varying size, the capital requirement, at the outset was graded according to population, as in California, Nebraska, North Dakota, South Dakota.

It is to be noted that the scales generally do not go very high. After the capital requirement reaches, in most states, $25,000, and in some, $50,000, no increase is made for larger towns. It is only in Kentucky, New York, California, Illinois, Michigan and Massachusetts that requirements go to $100,000. As compared with the national system, the necessary capital is, generally, lower not only for small towns, but for places of any size. The gradation does not advance so rapidly, nor extend so far. The recognition of capital as a fund for the security of creditors did not figure often in our early banking history. The same idea, however, was the basis of the restriction of note issue according to capital. Looking, as the antebellum systems did, to the security of the note holder, it was natural that the capital should be considered a fund for their protection. These restrictions also served the purpose of keeping the note issue within bounds.

It is evident that regulation of capital according to the population of the place in which the bank is located is a very crude way of securing any proportion between capital and volume of business. The more elaborate the sliding scale is made, the more nearly on an average will an approximation be made to the desired result, but no scale can take into account differences in localities as to business, nor the more important question of competition. Even if towns of 1500 population had equal amounts of

business, it cannot be known among how many banks this is divided. So that if capital regulation is of any value, it seems worth while to secure a more regular proportion between capital and deposits than can be gotten by scales based on population. In this connection, the recent legislation in Kansas is worthy of notice. In 1897, the legislature being convinced of the utility of grading its capital requirement, which had previously been a uniform minimum of $5000, made use of a new method of applying the principle that capital should be regulated according to business. It was enacted that the total investments of any bank, exclusive of United States bonds, should not exceed four times the capital and surplus actually paid in.[17] The purpose and operation of this clause is thus described by the Kansas Bank Commissioner.[18] "One provision, which produced the greatest opposition, was the section which limited the total investments of every bank to four times its capital and surplus. The theory upon which the adoption of this section was urged, was that a bank's capital should bear some proper proportion to the volume of business transacted by it; and there being no possible way by which the amount of deposits could be restricted, the idea of restricting the investments appeared to be, not only possible, but wise. It was argued, in support of the proposition, that it would result in an increase in the capital of small banks, thereby giving greater protection to depositors; that it would not be a difficult matter to procure additional capital when, for each thousand dollars thus invested, the bank could invest four thousand dollars, and above all, that banks should be content with receiving an income on four dollars for every dollar invested. The operation of this section has resulted in nearly one hundred banks increasing either their capital or surplus. Many have carried their entire earnings to

[17] Laws of Kansas (1897), chap. 47, sec. 9.
[18] Report of Bank Commissioner, 1897-98, p. VIII.

surplus, thereby adding to the strength of the bank and the security of depositors."

It has been contended by an eminent authority that such legislation is of no value, being based on "a conjectured average too rough to be of service in any individual case," and that, "in this respect, as in so many others, the judgment of the persons most interested, acting under the law of self-preservation, is far more trustworthy than any legislative decision."[19] There seems, however, a general consensus of legislative opinion that some form of regulation of capital is necessary. The theory on which the state and national systems of bank regulation rest is that it is proper to prescribe those things which persons would do if they acted with good judgment. The majority of bankers would lay by a surplus fund if there were no legal requirement, but it is none the less expedient to force others to do likewise. It is also to be noted that with regard to the size of capital, the interest of the banker runs counter to the protection of the depositor. The larger the business which can be built on a capital, the greater will be the dividends earned. The banking laws are built on averages; if prescribing a certain capital will cause men, who otherwise would not, to make business and capital more closely correspond, and if this is desirable and can be accomplished without any ill effects, it seems a proper addition to the banking laws.

There is one consideration, however, which deserves attention. Under the operation of the sliding scale, what might be termed a "capitalistic monopoly" is created. For example, in a town of 2000 people, if the capital required is $50,000, there would probably be one bank only, since there is not enough business to justify dividends on two such capitals, and no smaller bank can be started. Under the Kansas system, another bank could be organized with $5000, and as its business increased, its capital

[19] Dunbar, "Theory and History of Banking," p. 21.

would grow. Evidently, competition is made freer, but it is doubtful if this is beneficial. While competition should be allowed, the economies of larger institutions ought to be preserved. The one bank would serve the people more cheaply in all probability than several smaller ones. It would appear then that a sliding scale is of importance, and should be supplemented, and not supplanted, by the Kansas method. It is necessary, of course, in any application of the Kansas law, that sufficient encouragement should be given to individual enterprise. If the capital requirement is heavy, the incentive to build up business will be reduced and deposits which might be secured, will not be obtained. To restrict investments to four times the capital and surplus is, however, not a hardship. The national banks, on the average, do not do nearly so profitable a business. In 1899, their investments were only about three times their capital and surplus.

Payment of Capital.—Under "general incorporation laws," there may be a wide difference between nominal and paid-up capital. The amount of the variance is left to the discretion of the directors, who have power to require the payment of the remainder of capital at such times as they think proper.[20] As long as banks were allowed to be incorporated under the general law, it was possible for the authorized capital to be largely in excess of the sum actually paid in. It is assumed that persons having dealings with corporations will be able to ascertain the real capital; but the depositor in a bank stands on a different footing. As a general rule, he is unable to distinguish between the nominal and the authorized capital. He gives credit frequently on the basis of the published capital, and it has been thought expedient that there should be no possibility of deception in the matter. The working of a law undifferentiated in this respect has been forcibly de-

[20] In some states part of the capital must be paid in, *e. g.*, in Vermont, one-half; a number of states require ten per cent, but in the great majority, no sum is fixed.

scribed by the California Bank Commissioners as follows: "Licenses to conduct the business of banking have been demanded and received under the law, the Commissioners being powerless to refuse them, when the amount of capital stock paid up was merely nominal, in fact, infinitesimal, and these concerns most loudly proclaim their authorized capital." [21]

Again, if capital is regarded as a fund for the security of depositors, it is absolutely necessary that the capital should be paid up, or the purpose of the law is defeated. As has already been pointed out, in certain states the capital requirements are considerably affected by the provisions for payment. It is useless to prescribe a minimum capital, unless some provision is made to secure payment.[22] The case of West Virginia is in point; nominally the minimum capital is $25,000,[23] but practically, the law is entirely undifferentiated in this respect. Only ten per cent need be paid in before the certificate of incorporation is issued, and the remainder is subject to the call of directors. These conditions are the same as those prescribed under the "general law" for ordinary corporations.

The national banking act has been the most powerful influence in determining the form of the state legislation designed to amend this evil. In the following states, fifty per cent must be paid in before beginning business, and the remainder in a specified time, ranging from five months to two years: Pennsylvania, South Dakota, Missouri, California, Oklahoma, Wyoming, Colorado, North Dakota, Massachusetts, Florida, Kentucky, Indiana, Michigan.[24] In the most recent legislation, a tendency to

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[21] Twelfth Annual Report of Banking Commissioners of California.

[22] Such provisions may be of importance, however, in another way. See page 58.

[23] Laws of West Virginia (1872), chap. 215.

[24] Slight variations from this rule are Ohio, 60 per cent; Utah, 25 per cent, remainder in one year; Washington, three-fifths.

go somewhat farther in stringency has manifested itself, and in Maryland, New York, Iowa, Montana, Vermont, Minnesota, Nebraska, Illinois, New Jersey and Kansas the entire capital must be paid up before any business can be transacted by the corporation. In Georgia and Wisconsin, specified sums must be paid in, irrespective of the size of the capital. The remaining states are less rigid in their requirements. In those enumerated above as not requiring a minimum amount of capital, there are naturally no provisions for payment. It is quite conceivable, however, that a state, which has no minimum capital requirement, might yet endeavor to have authorized and real capital correspond in order that the depositor might not be deceived by a fictitious capital, but as the first step usually taken by a state in bank regulation is the fixing of a capital minimum, no such attempt has been made in any of the states.

The only good reasons for allowing any part of the capital to reman unpaid are: (1) That the bank cannot use all of its capital conveniently at first; (2) The convenience of the shareholders in paying by installments. Any provisions allowing a greater time than is required by these considerations are to be condemned as likely to lead to evils.

Impairment of Capital.—Having secured the payment of a capital considered requisite for the business, it is necessary to provide that the amount paid in shall not be impaired in any way except by a decrease of stock, which shall not be so great as to reduce capital below the legal minimum. There are two ways in which capital may be impaired: (1) By payment of unearned dividends; (2) By losses being greater than profits.

Under the "general incorporation law," it is the usual rule that dividends are to be paid only from earnings, but in providing a safeguard, the states may be divided into two great classes: (1) Those imposing a liability on directors for dividends which impair capital; (2) States

which make directors responsible only when dividends impair the capital to such an extent as to make the assets less than the liabilities of the corporation. The second class of states is by far the more numerous, and in them there is no restriction on the payment of dividends so long as the assets exceed liabilities. It is difficult in the case of the ordinary corporation to ascertain whether dividends are paid from capital or earnings, since such a calculation depends on the valuation of property. In the case of a bank, property is almost entirely in the form of debts due the bank, and the value of such assets is easier to estimate.[35]

Before the enactment of the national banking act, it had become a well-settled rule in state legislation that dividends could only be paid when the net profits of the bank exceeded its losses, and that if capital was impaired by losses, no dividends should be paid until the capital was restored to its proper amount.[36] The same principle has been recognized in the state banking systems since 1864. Even in most of the states where the "general incorporation law" does not restrain impairment of capital, it has been recognized that banks should be regulated differently in this respect.

The national law in its original form did not provide any better method of keeping capital up to its full value. It was not until 1873, that the Comptroller of the Currency received power to order the directors to assess shareholders when capital was impaired.[37] Previous to that time, the only remedy was to wait until profits made up

[35] According to nearly all the state laws, debts unpaid for a certain length of time are not to be considered in estimating a bank's assets for the purpose of finding net profits.

[36] See, for example, New York (1838), chap. 260, No. 28; Wis. (1852), chap. 479, sec. 40; Minn. (1866), chap. XXXIII, No. 31; Ohio (1851), 49, v. 41, sec. 22; Ind. (1855), p. 23. If dividends were made, any person in interest might apply to the courts for a receiver.

[37] Sec. 5205, Revised Statutes of U. S.

for losses. In the state systems, the simple prohibition of dividends in case of impairment of capital was not adequate to the necessities of the case, but in nearly all the legislation it was the only remedy available, until within a comparatively recent period. Before any method of assessment could be put in force, it was necessary that there should be a satisfactory system of examinations, and in some cases, even after this has been provided for, there has been a slowness in giving the officials such summary powers.[28] In most of the states where inspection is thorough, this power has been given to the heads of the state banking systems. As soon as examinations were regularly made, it was found that in many cases the capital of banks was grossly impaired,[29] and it was urged that a summary remedy be provided for this evil. In general, legislation has followed the lines of the national bank act as amended, and the state officials have been given authority to order directors to make an assessment, and if this is not done, to apply for a receiver for the bank. This is the provision of the law in New York,[30] Michigan,[31] Oklahoma,[32] Missouri,[33] Kansas,[34] Nebraska,[35] Pennsylvania,[36] Minnesota,[37] Georgia,[38] Florida[39] and Indiana.[40] In Illinois, the State Auditor, himself, assesses and collects the sum necessary to restore capital.[41] By the Iowa law if the directors of a bank do not assess on the order of the State Auditor, they are themselves responsible for any

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[28] See for further discussion of this point, "Supervision."

[29] For example, see "Report of Bank Examinations in Missouri," 1897.

[30] N. Y. (1890), chap. 429.

[31] Mich. (1889), chap. 205, sec. 42.

[32] Okla. (1899), chap. 4, sec. 43.

[33] Mo. (1895), p. 97.

[34] Kans. (1897), chap. 47, sec. 20.

[35] Neb. (1889), chap. 37, sec. 13.

[36] Pa., Feb. (1895), sec. 6, P. L. 4.

[37] Minn. (1895), chap. 145, sec. 19.

[38] Ga. (1895), p. 58.

[39] Fla. (1889), chap. 3864, sec. 34.

[40] Ind. (1895), p. 205.

[41] Ill. (1887), p. 90.

losses.[42] The Wisconsin law simply provides for the publication of the fact in a local newspaper, if any impairment is not made good.[43] In the other states, the only way by which losses must be made good is by the accumulation of profits.

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[42] Iowa, 25 G. A., chap. 29, sec. 2. The power is given by the code revision of 1897 to apply for a receiver if the directors do not comply. Code of Iowa, sec. 1877.

[43] Wisconsin (1895), chap. 291, sec. 11. The law of 1897, passed by the legislature, but rejected by a popular vote, gave the Examiner the right to apply for a receiver.

CHAPTER III

SUPERVISION

As it has become necessary to differentiate banks from other corporations in the matter of capital, there has also arisen a need for supervision, partly to insure that capital requirements are observed; partly that other regulations peculiar to the business of banking are obeyed. Thus, while supervision may be considered, in itself, a differentiation of the "general incorporation law," it is set up in order that other differentiations may be effectively carried out.[1] As long as banking was on the same footing as other lines of business, supervision was rarely exercised.

In its highest form of development, supervision includes adequate means of ascertaining whether the law is complied with, together with the bestowal of power on some state official to act when violations occur. In reaching a conclusion as to whether a bank is obeying the law, two means are used: (1) Reports under oath are to be made at intervals by the bank's officers; (2) Examinations are made from time to time by state officials. The only form of supervision widely in use in the states until the beginning of the present movement, was the requirement of reports. In many of the states, the antebellum laws had imposed on banking corporations the duty of making reports of condition, and this legislation, for the most part, has remained in force during the whole period since the passage of the national bank act. Thus, in 1873, when the Comptroller of the Currency first began to pub-

[1] California is unique in this respect. Its system of supervision was originally imposed on a general incorporation law. Gradually, however, a considerable degree of differentiation has been brought about.

lish statistics of state banks, reports were made in nearly all of the New England, Eastern and Middle States.

An examination of the table on page 49 will show the improvement since that time in this respect. It will be seen that in some cases, laws have been passed requiring reports but making no provision for examinations. Of this character, are the laws of Mississippi,[2] Colorado,[3] Washington[4] and Kentucky.[5] This was the status of supervision in a large number of states prior to 1887, and it may be considered as the first stage in the evolution of the present systems. Banks were usually required to publish these reports in some local newspaper, and thus a certain amount of what may be styled "public supervision" was attained.[6] When used alone, however, reports furnish an inadequate basis for an efficient system of regulation. In the years preceding 1887, in the majority of the states, reports were made on fixed days, and generally, not more than once a year.[7] Since the report has become a real means of supervision, its character has changed; it is now made more frequently, and on days set by the state officials, and not known in advance by the bank's officers. So that there has been a rapid increase both in the number of states requiring reports, and an equally important advance in their efficiency.

Bank examination has been always somewhat later than

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[2] Miss. (1888), p. 29.

[3] Col. (1877), Sec. 243.

[4] Wash. (1886), p. 84.

[5] Ky. (1893), chap. 171. The Secretary of State may require reserve to be made good, but evidently such a power can seldom be exercised simply on the basis of a report.

[6] In Tennessee, while banks make no reports to state officials, they must publish statements of condition in a local newspaper. Tenn. (1875), chap. 142, sec. 17.

[7] A considerable part of this kind of legislation has had the aim of securing statistical information. The Comptroller of the Currency, at various times, has urged on the state governments the expediency of requiring reports (see Report of the Comptroller of Currency, 1879, p. 59), and it was in compliance with his request that the greater part of the legislation prior to 1887 was enacted.

reports in making its appearance as a means of supervision. Even at the close of the Civil War, it was only in the New England States that banks were regularly examined by state officials.[8] In the other states, examinations were made only when there was reason to suspect improper management, or on application of stockholders or creditors. The development of legislation on this subject in New York may serve as a type of that in the other states. Under the provisions of the Safety Fund Act, the Commissioners were to examine each bank quarterly;[9] the "free banks," however, were not subject to this requirement, and were only examined by order of the Chancellor on application of persons interested.[10] During the years 1842-1843, all banks were under the supervision of the Safety Fund Commissioners,[11] but in 1843, their office was abolished, and the Comptroller placed in charge of banks.[12] He was not empowered, however, to examine them, unless he suspected their solvency, and it was not until 1884, that examinations were required to be regularly made. The first attempts at supervisory legislation after the Civil War generally followed the precedent set by the laws already in existence. Thus, in Virginia,[13] Florida,[14] New Mexico,[15] and North Carolina,[16] the examinations were to be made only on application, or when some state official considered the bank unsafe. The only laws passed prior to 1887 which provided for regular examinations were those of New York,[17] Indiana,[18] Minnesota,[19] and California.[20] Since

[8] Rhode Island was an exception, following the Eastern and Middle states in this respect.
[9] New York (1829), chap. 94, sec. 5.
[10] New York (1838), chap. 260, sec. 25.
[11] New York (1841), chap. 363.
[12] New York (1843), chap. 218, sec. 6.
[13] Va. (1884), chap. 198, sec. 1.
[14] Fla. (1868), chap. 1640, sec. 12.
[15] N. M. (1884), chap. 36, sec. 7.
[16] N. C. (1887), chap. 175.
[17] N. Y. (1882), chap. 409, sec. 12.
[18] Ind. (1873), chap. VIII, sec. 18.
[19] Minn. (1878), chap. 84, sec. 14.
[20] Cal. (1878), p. 840.

then, the movement has been rapid, until at present, regular examinations are made in all the states, except Delaware, Virginia, South Carolina, Mississippi, Alabama, Arkansas, Tennessee, Kentucky, Ohio, Colorado, New Mexico, Washington, Oregon, Idaho and Nevada. It will be noticed that nearly all these states permit banks to be formed under the "general incorporation law." Ohio, Colorado, Alabama, Washington and Kentucky are the only ones in the list requiring a specified capital for the formation of banking corporations. On the other hand, Arizona is the only one of the states and territories incorporating banks under a general law which has regular examinations, and no capital requirements.

The influence of the adoption of a system of supervision on the banking laws is marked. While the purpose of supervision is to carry into effect laws which without it would be inoperative, when once put into operation, it becomes itself an active force in promoting new legislation. Examinations soon disclose evils which the law does not deal with, or for which the remedy provided is inadequate. New legislation is asked for, and usually granted by the legislatures.

There are, then, fifteen states and territories in which there are no provisions for the examination of state banks. This statement gives, however, an erroneous impression of the extent to which state banking is unsupervised, since the number of banks in these states is somewhat below the average. Of 4200 banks incorporated under state laws, in operation in 1899, nearly 3100 were regularly examined by state officials, so that while only about two-thirds of the states provide for supervision, the number of banks in those states is three-fourths of all the state banks in existence. In recent years, the extension of supervision has been much faster than the growth in numbers: in 1887 there were 1526 state banks in all the states and territories, and only 341 were subject to regular examinations. While state banks since that time have nearly

trebled in numbers, about nine times as many banks are now under effective supervision as there were then.

An examination of the list of states making no provision for periodical examinations, will show that they fall into two groups: (1) The states and territories in which settlement is very recent, and especially those in which mining and stock raising are more important than agriculture; (2) A considerable number of the Southern States. Delaware and Ohio are exceptions, falling in neither class. In the former group the number of banks is as yet small, and the matter has not been deemed of importance. On the contrary, there are in the South, a large number of state banks. Of the 1100 banks which are not examined, over 800 are located in this section. The reason for the backwardness of Southern banking legislation in this respect is not to be found in any peculiarities of the banking systems in these states, although it is possible that the use of special charters continuing there later than elsewhere may have somewhat retarded the development of systems of supervision. That this cannot be the fundamental cause is shown by the fact that both North Carolina and Georgia began the examination of banks while using special acts of incorporation. Also some states, such as Mississippi and Arkansas, which have had the general act as the exclusive means of incorporation for a considerable time, have not yet developed any effective supervision. A truer explanation would probably be found in the general legislative tendencies of the Southern people. In no section of the country has there been less control of private business by the state governments than in the South. The policy of *laissez faire* has been, until recently, consistenly pursued. There are signs, however, that a movement toward bank supervision is in progress. The constitution of South Carolina adopted in 1895,[21] and the Louisiana

[21] Art. IX, sec. 9; also laws of 1896, No. 48. For some reason, however, this law has been inoperative, and there is as yet no bank examination in South Carolina.

constitution of 1898,[22] both provide for the appointment of state examiners.

In the method of paying bank examiners for their services, the state laws have made a noteworthy improvement upon the national system. A national bank examiner is paid entirely by fees.[23] In his report for 1887,[24] the Comptroller of the Currency said, "From many points of view, it would be expedient for the examiners to be paid out of the tax on national banks, and not by fees. The present system establishes relations between the bank and the examiner which are inconsistent with the functions of that officer, and with what ought to be his attitude toward the bank." Futhermore, under the fee system it is to the the interest of the examiner to make his inspection as rapidly as possible, since the amount of his earnings depends on the number of banks he examines. Various methods have been used in the different states to overcome this defect in the national bank act. The most common has been to require the banks to pay fees to the state treasury, and examiners are paid an annual salary. This is the case in Michigan,[25] Oklahoma,[26] Wisconsin,[27] North Dakota,[28] Missouri,[29] and Minnesota.[30] In other states, the expenses of supervision are assessed on banks, usually in proportion to capital or deposits. This method is followed in New York,[31] California,[32] and Georgia.[33] The examiners are regarded as state officials, and are paid by salary, but it is considered proper that the banks should pay all or part

[22] Art. 194; also laws of 1898, Art. 198.
[23] Revised Statutes of the U. S., sec. 5240.
[24] Page 9. See also to same effect, Report of Comptroller of Currency, 1900, Vol. I, p. xxvii.
[25] Michigan (1887), Art. 205, sec. 40.
[26] Oklahoma (1899), chap. 4, secs. 25, 26.
[27] Wisconsin (1891), chap. 295, sec. 7.
[28] North Dakota (1893), chap. 23.
[29] Missouri (1897), p. 83.
[30] Minnesota (1893), chap. 41, secs. 1, 2.
[31] New York (1882), chap. 409.
[32] California (1878), p. 740.
[33] Georgia (1889), p. 65.

of the expenses. There are some states, usually those in which banks are few, where some state officer having other and more important duties is charged with bank supervision, and no fee is imposed on the banks, the state paying all expenses. It may be said in general that nearly all the states in one way or another have avoided the evils of the fee system.

If then, by examinations or reports, it is disclosed that the bank has an impaired capital, is violating the laws, or is insolvent, what power is given to state officials to take action? It is usually required that notice shall be given, but if this proves ineffective, the proceedings for insolvency must be taken. It is here that a radical difference appears between the state and national systems. Under the state laws, the courts must be applied to for the appointment of a receiver,[84] while the Comptroller of the Currency has power, without the intervention of judicial procedure, himself to appoint a receiver, who acts under his direction. The final power, then, to regulate state banks rests with the law courts, while national banks are under the control of the Comptroller. The one is a judicial, while the other is an administrative system. Receivers for all other corporations are judicial officers, and the legislatures of the states have been unwilling to distinguish, in this respect, banking from other corporations. Before the passage of the national bank act, the appointment of bank receivers in all the states was in the hands of the courts. The conditions surrounding the national act, made it necessary to

[84] The state official is not always authorized to apply for a receiver. In Wisconsin and Louisiana, publicity is relied on; the bank continues, but the people are warned by publication of its condition. The Bank Examiner of West Virginia reports to the Board of Public Works, which has power to revoke the bank's charter. The State Examiner of South Dakota simply reports to the Governor. Of course, in those states where there is no supervision, action must be taken by the individuals concerned as in the case of the ordinary corporation.

give this power to the Comptroller.[35] The matter passed from the courts. In the national system, the decision of the Comptroller is final and no room is left for a contest on the part of the bank.

As soon as state supervision became well organized, it was seen that the appointment of receivers by the courts failed to cover the needs of the case in one important particular. In the time which must necessarily elapse before action could be taken by a judge, assets were frequently misapplied by the directors. Arrangements were entered into which seriously diminished the fund from which depositors were to be paid. In order to prevent such a dispersion of the assets, under the antebellum systems it was usually made the duty of some state official to secure an injunction forbidding the bank to carry on business or to transfer its assets.[36] To secure an injunction requires time, and speedy action is desirable. This would, however, without any doubt, have been the direction which the

[35] It is of interest to note that the cases in which the Comptroller may appoint receivers have been steadily increased. Originally, it was only when a bank defaulted on its notes that he could take charge of it. In 1870, he was authorized to appoint receivers for banks with impaired capital, and it was not until 1876 that his power was extended to cover cases of insolvency. Even at the present time, violations of some provisions of the national bank act can only be punished by a resort to the courts for a dissolution of the corporation.

[36] The New Jersey act of 1889 for bank examination follows the old method, and may be taken as an example. It runs: "Whenever it shall appear as the result of examination that the affairs of any such corporation are in an unsound condition . . . or that it is transacting business . . . in violation of law, it shall be the duty of the Attorney-General, on notice by the Commissioners, to apply forthwith, by petition or bill of complaint or information, to the chancellor for an injunction restraining such corporation from the transaction of further business, or the transfer of any portion of its assets in any manner whatsoever, and for such other relief and assistance as may be appropriate to the case; and the chancellor being satisfied of the sufficiency of such application, or that the interests of the people so require, may order an injunction, and make other appropriate orders in a summary way." N. J. (1889), p. 368, chap. CCXXXIV.

state legislation would have taken, if it had not been for the example of the national bank act. The plan actually adopted has been to confer on state officials the power to take charge of a bank immediately, and hold its assets until a receiver is appointed, or the application refused. This authority, in most cases, has been given somewhat later than the power to apply for a receiver, and may be considered a movement in the direction of a more highly administrative system.[37] Many states, however, have never taken this step.[38]

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[37] In some states there is a slight control over receivers by the state bank officials. In Michigan, dividends are distributed under the order of the State Bank Commissioners, and insolvent banks, in a few states, are examined periodically, but it may be said in general that the administration of assets is an exclusively judicial duty. Even statistics of insolvent banks are printed in only a few of the state reports.

[38] The following table shows for each state the present stage and the development of its supervision.

TABLE SHOWING GROWTH AND PRESENT STATUS OF STATE BANK SUPERVISION.

	Regular Reports begun	Regular Examinations begun	Power conferred on State officials to apply for a receiver	Power conferred on State officials to take possession of bank pending appointment of a receiver
Maine	Ante bellum	Ante bellum	Ante bellum	
N. H.	" "	" "	" "	
Vt.	" "	" "	" "	
Mass.	" "	" "	" "	
R. I.	" "		" "	
Conn.	" "	Ante bellum	" "	
N. Y.	" "	1884	" "	1893
N. J.	" "	1889	1889	1899
Del.	" "			
Md.	1870	1898	1898	1898
Pa.	Ante bellum	1891	1891	1895
Va.	1884			
W. Va.	1891	1891		
N. C.	1887	1889	1891	
S. C.				
Ga.	1889	1889	1895	
Ala.				
La.	1882	1898		
Fla.	1869	1897	1889	
Miss.	1888			
Tex.				
Ark.				
Tenn.				
Ky.	1870			
Ohio	Ante bellum			
Ind.	" "	1873	1895	1895
Ill.	" "	1887	1887	1887
Mich.	" "	1887	1887	1893
Wis.	" "	1895		
Ia.	" "	1891	Ante bellum	1897
Minn.	" "	1878	1889	1889
Mo.	1877	1895	1895	1895
Kan.	1891	1891	1891	1891
Neb.	1877	1889	1889	1895
N. D.	1890	1890	1893	1893
S. D.	1891	1891		
Okla.	1897	1897	1897	1897
Mon.	1887	1895	1899	1899
Wyo.	1888	1888	1895	1895
Col.	1877			
N. M.	1884			
Wash.	1885			
Or.				
Cal.	1878	1878	1878	1895
Ida.				
Utah	1888			
Nev.				
Ariz	1893	1893	1893	

CHAPTER IV

REAL ESTATE LOANS

There is no more characteristic difference between the state and the national banking laws than the fact that almost without exception, state banks may loan on real estate security, while national banks are prohibited from doing so.[1] In the antebellum state laws, in only a few cases were the banks forbidden to loan money on landed property. As long as banks were chartered under the "general incorporation law," they had power to make loans on every form of security, and in the transition to a differentiated law, the legislatures of the various states have still allowed the same freedom.[2] In some cases, where the influence of the national act has been strong enough at the outset of state bank regulation to secure the insertion of the prohibition against real estate loans, it has later been found desirable, after some experience, to amend the law in this respect.[3]

While there has been no long-continued tendency in the state legislation to follow the national bank act in its prohibition of real estate loans, there has been, in a few states, a movement toward placing a limit on the amount of such investments. The law recognizes the propriety and safety of such business, but also endeavors to keep it within bounds. Thus, by the South Carolina law, not more than one-half of the capital and surplus may be loaned on mortgages of real estate.[4] Similar restrictions are imposed by

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[1] Revised Statutes of the United States, sec. 5137.
[2] The only exceptions are Oklahoma and Ohio.
[3] North Dakota (1899), chap. 28; South Dakota (1893), chap. 23.
[4] South Carolina (1887), No. 427.

the laws of North Dakota,[5] South Dakota,[6] and Michigan.[7] The most elaborate provision on the subject is that contained in the defeated Wisconsin act of 1897, in which it was enacted that "no bank should lend to an amount exceeding twenty per cent of its capital stock upon mortgages or any other form of real estate security, except on the adoption of a resolution by a two-third's vote of the boad of directors, specifying some larger amount which its officers might loan upon real estate security; provided that in no event should any bank so loan an amount to exceed twenty-five per cent of its capital, surplus, and deposits, and provided that banks doing business in villages or cities having less than six thousand inhabitants under the last official census, might loan a sum not to exceed thirty-three and one-third per cent of the aggregate of its capital, surplus and deposits upon real estate security."[8] With the exception of these states, and of those in which real estate loans are entirely prohibited, the amount of such investments is left entirely to the discretion of the officers of state banks.

Real estate security, as a basis for bank loans, has been quite generally condemned by writers on the subject of banking. Mr. Horace White says, "The reason why lands and buildings ought not to form the basis of the loans of a commercial bank is that they are not quick assets. The liabilities of the bank being payable on demand, the assets must be converted into money within short periods. When

[5] North Dakota (1899), chap. 28.

[6] South Dakota (1893), chap. 23.

[7] Michigan (1887), Art. 205, sec. 23. Under the provisions of the Michigan law, no real estate loans can be made until a resolution stating the extent to which such loans may be made has been passed by a two-thirds vote of the directors. The amount must in no case be more than fifty per cent of the capital of the bank.

[8] Wisconsin (1897), chap. 303, II, sec. 23. This law was strenuously opposed in some quarters on the ground that it did not provide sufficiently for real estate loans, and it was largely owing to this feeling that it was defeated by the popular vote. (Fifth Annual Report of the Bank Examiner of Michigan, p. IX.)

real property is given as security for a debt, both borrower and lender look to it, and not to the personal obligation, as the source of payment."[9] It will be seen that this theory is predicated on the assumption that the deposits are demand liabilities, but it is one of the salient features of state banking that a large part of the deposits are time liabilities. It is not possible to ascertain for all the states what proportion time deposits bear to those payable on demand, but the following table shows the relation in a few typical states:

	Demand Deposits.	Time Deposits.[10]
Wisconsin (1899) Dec. 2,	$19,803,760.83	$23,874,040.77
Louisiana (1899) Dec. 31,	12,280,772.58	4,092,688.59
Kansas (1898) July 14,	19,553,081.17	2,841,875.14
N. Carolina (1898) Sep. 20,	3,822,990.44	389,560.88
Missouri (1899) Aug. 22,	62,980,924.93	15,469,496.03
Mississippi (1899) June 30,	9,031,982.28	797,100.12
New Jersey (1899) Dec. 2,	8,711,107.52	39,044.83
Indiana (1897) Oct. 20,	9,848,669.15	1,060,933.70
Illinois (1899) Dec. 4,	94,223,716.40	12,969,561.30

In the development of a community, there is a period when the functions of a savings bank and of a commercial bank are united in one institution, which has time liabilities, as well as demand deposits. In an agricultural section, these functions continue united, and the bank is a place of investment for a portion of its patrons. It seems perfectly safe that such a bank should have power to loan on real estate security. As industrial life develops, differentiation sets in, and two kinds of banks emerge—savings or investment banks,[11] and banks of discount and deposit.

[9] "Money and Banking," p. 409.

[10] Savings deposits are excluded wherever possible from these figures, and only deposits on time certificates included.

[11] Time deposits are usually made in large sums, and so differ from savings deposits, which are generally accumulated by degrees, but their fundamental similarity for the purposes of this discussion, consists in the fact that both kinds are regarded as investments, and consequently, are not demand liabilities.

It will be noticed in the preceding table that the state banks in New Jersey have practically no time deposits. In other words, the separation of the two classes is complete in that state.

The national banking act was not designed to fill the needs of the country for banks of discount and deposit, except in so far as those needs might be incidentally filled by banks primarily intended as a means of note issue. It was supposed that banks with $50,000 capital would be located in places where they would have no considerable amount of time or savings deposits, and it was for such banks that the prohibition against real estate loans was designed.[12]

Other things being equal, the larger the town, the more complete is the separation of savings and commercial banks,[13] and consequently, the less ought to be the investment in real estate securities. This is the principle adopted in the Wisconsin act of 1897 mentioned above, and it undoubtedly ought to form the basis for any legislation as to the amount of real estate investments which a bank may make. There is reason, however, to believe that self-interest will effect this without legislation. In smaller places, real estate loans yield as high a rate of interest as any other investment, but in cities, the rate of interest obtained on commercial loans is higher than that which can be gotten by loans on land, and consequently, banks will lend on personal and collateral security by preference. An interesting analysis recently made by the Bank Examiner of Wisconsin shows that the matter thus works itself out. He says, "A classification of the loans and discounts indi-

[12] There is a growing disposition to regard a reasonable amount of real estate loans as safe for a bank carrying only demand deposits. In most cases, a mortgage, if well secured, is quite as convertible as are stocks and bonds, on the security of which all national banks freely loan. See, for recent discussion, Banker's Magazine, Vol. 54, page 12 (editorial).

[13] In several states in the Middle West, even in the largest cities, the banks retain this composite character. See Appendix, p. 112.

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cates that $31,012,220.37, or 77 and 98-100 per cent of this class of assets, consists of paper with or without other personal security, and $8,749,881.51, or 22 and 1-10 per cent, on mortgage or other real estate security. By a further classification of the real estate loans, it may be noted that in cities of more than six thousand inhabitants, real estate loans constitute 8 and 26-100 per cent, and in towns and cities of less than six thousand inhabitants, 19 and 91-100 per cent of the aggregate capital, surplus, and deposits."[14] Likewise, the real estate loans made by state commercial banks in San Francisco are only 11 per cent of the total loans and discounts, while in the state banks outside San Francisco, they are over one-third.[15]

There seems, on the whole, no disposition on the part of state banks to lock up any large part of their funds in real estate securities. Unfortunately, such investments are not separately classified in many of the state bank reports, but the following statistics are probably typical:

	Real Estate Loans.	All other Loans.
California (1899) July 31,	$19,131,453	$56,395,709
Kansas (1899) Dec. 2,	1,002,360	18,214,679
Missouri (1899) April 5,	6,396,005	62,310,630
Louisiana (1900), June 30,	1,832,688	9,005,621
N. Carolina (1899) June 30,	713,353	4,087,320

There may, however, be individual cases where the directors of a bank will exceed reasonable limits in this respect, and it would appear to be in accordance with the general theory of bank regulation that the amount of such loans should be limited.

The power to lend on real estate is profitable to the state banks. In many communities, there is not enough commercial paper to employ the banking capital, and if banks are restricted to that form of investment, a large portion

[14] Fifth Annual Report of the Wisconsin Bank Examiner (1899), p. IX.

[15] Report of California Bank Commissioners, 1899.

of banking funds would lie idle, and just so much revenue would be lost to the banks. There is reason to believe that the national banks in the South and West, although located mostly in the larger places, labor under this disadvantage. According to the report of the Comptroller of the Currency for 1899, reserves were held at various dates as follows:

	Feb. 4.	Apr. 5.	June 30.	Sep. 7.
Central Reserve Cities,	28.9	26.4	25.7	25
Other Reserve Cities,	36.5	33.5	31.6	30.3
Country Banks				
New England States,	31.7	30	27.4	27.9
Eastern States,	31.4	30.3	28.6	29.3
Southern States,	35.9	34.9	32.4	30
Middle States,	35.5	33.9	33.8	33.9
Western States,	37.4	37.7	40.4	40
Pacific States,	36.0	38.0	38.4	39.0

The theory on which the national law rests is that reserve and central reserve cities should carry larger reserves than country banks, while as a matter of fact in the greater part of the United States, the contrary is the case. The Western states deserve especial attention in this connection. In this group there are many national banks in the smaller towns, and it is here that reserves reach the abnormal height of forty per cent. It is not to be supposed that the average of a number of banks will show a reserve anything like so low as the legal minimum, but it is evident that when New England banks can use their funds so that they only keep about thirty per cent of reserves, while banks in the West must keep forty per cent, there are important differences in the loans which can be made in the two sections. Very large reserves are by no means desirable. They are a standing temptation to unsound banking; they increase the cost of banking and consequently tend to keep the interest rate high. If the revenue of the banks is diminished, the rate paid by borrowers

must, in the long run, be high enough to make up for that loss.

It would be of interest to know for what length of time loans on real estate security are usually made by the banks. No statistical data bearing on this point can be obtained, but there is reason for believing that a large part of such loans are for a year or more. There is a great need in agricultural sections for loans to cover the time of production. At present, the banker is largely debarred from entering this field by the cost of examining titles and drawing mortgages. The expense is so great, considering the length of time the loan is to run, that credit is usually obtained from the merchant. Especially is this true in the South, where a large part of agricultural credit is thus furnished. This is the legitimate field of the banker, and if a system of real estate registration should be generally adopted by which the mortgaging of real estate would be safe and inexpensive, there can be no doubt that the banks would permit such credit, both to their own and to the farmer's advantage. In a considerable part of real estate loans the mortgage is only a collateral security. The bank looks primarily to the personal credit of the individual, but is further protected by an assignment of a mortgage. In many communities, real estate mortgages are an important form of investment, and just as in other sections bonds and stocks are pledged as security for a loan, so here, mortgages are thus used.[38]

However profitable to the bank or economically beneficial to the community loaning on real estate may be, the final test which such a policy must meet is its effect on the safety of the bank. It would be difficult to find anywhere in the literature of state banks any opinion to the effect that such loans, to a moderate amount, tend to cause insolvency. On the contrary, the opposite view is frequently

[38] The Comptroller of the Currency, in his report for 1887, p. 8, recommended that the national banking act be amended so as to permit this.

expressed."[17] Whatever the theory may be on the subject, as a matter of practice, no complaint is made against real estate loans.

[17] "In some sections, it has not been easy to employ the bank's funds without taking occasional real estate loans. This class of loans is, in some communities, the best paper offered. . . . Of course, banking institutions have failed, having among their assets large holdings of so-called real estate paper, however, where I have found opportunity to investigate such failures, I have uniformly found that the cause of the failure was not security—real estate or any other—but the lack of it." Essay by J. P. Huston, read before the Missouri State Bankers' Association, 1897. Bankers' Magazine, Vol. 56, p. 869.

CHAPTER V

LIABILITY OF STOCKHOLDERS

Under the common law, stockholders incurred no liability in the event of the insolvency of the corporation. There has gradually grown up in the courts of the various states what is generally known as the "Trust Fund Doctrine," under which it has been held that unpaid subscriptions to capital stock form a trust fund for creditors, and may be collected. The judicial view has been incorporated in the statutes of many of the states, until, at the present time, this doctrine may be said to be a universal rule of law in the United States. Since, however, as has already been shown, the laws in nearly all the states require stock in a banking corporation to be fully paid up either before active operations begin, or within a short time afterwards, the question of liability for unpaid subscriptions has become, except in a few states, of little importance, so far as banking companies are concerned. In Wisconsin, Georgia, Alabama, West Virginia, and Washington, a minimum capital of $25,000 is required for banks, but only a part of this need be paid in. The same principle was applied in the Missouri and Kansas "savings bank" laws of 1864 and 1868 respectively. Such provisions affect the liability of stockholders only in banks with a smaller capital than the required minimum. The laws state, in effect, that banks having less than a certain capital need special regulation, and this is provided for by imposing an additional liability on the shareholders. There seems, however, no prospect of an increase of legislation of this character. The small bank is no longer an experiment, nor can it be shown that it needs special safeguards.

While the liability for unpaid subscriptions has been one

of diminishing importance as banking has been differentiated from other corporations, the opposite has been the case with respect to "statutory liability," i. e., the liability of stockholders beyond the amount of the capital stock held by them. It was early recognized that banks occupied a peculiar position, differing widely from other corporations in the fiduciary relations which they maintained to their creditors. It was thought just, therefore, that their stockholders should be charged with heavier liabilities. The first laws for the regulation of banking proceeded in this respect as in others on the principle that it was the note holder alone who was to be protected. Thus the antebellum laws of Maine[1] and Massachusetts[2] imposed the statutory liability only for the benefit of the creditors who held the bills of the bank. In later legislation, the liability was restricted to stockholders in banks of issue,[3] but was for the advantage of all creditors. By the time of the Civil War, it had assumed its present form—a liability to the amount of the stock in addition to the stock. It has therefore become known as a double liability.[4] With the prohibition of state bank issue, and the consequent cessation of state regulation of banks, the liability of stockholders in banks tended to become the same as that of stockholders in other corporations. With the acceptance of the principle that the depositor was entitled to the protection of banking regulation, came the renewed imposition of double liability as a part of the general scheme of banking legislation,[5] until at present, the double liability

[1] Maine (1841), chap. 1, sec. 8.
[2] Mass. (1828), chap. 96, sec. 13.
[3] Constitution of N. Y. (1845), Art. 8, No. 7; Pa. (1850), P. L. 477, sec. 32.
[4] In a few states—Kentucky, Kansas, Minnesota, and Ohio—the double liability is imposed on the stockholders in all corporations. In California, they are chargeable with their proportionate part of the debts, and under the Indiana law, while not responsible for unpaid subscriptions, they are liable for a sum equal to the stock held by them. With these exceptions, the liability in the United States in other than banking corporations is usually a single one.
[5] In Georgia, the liability is for the exclusive benefit of depositors.

is imposed in nearly all the states[6] where state banking assumes any great importance.[7]

It cannot be said that the "statutory liability" in the state banking systems has proven of very great service as a protection to the creditors against loss. While it is impossible to cite statistics on this point since none are in existence, an examination of cases adjudicated under such laws shows that very little benefit accrues to the depositor from such provisions. As yet, little has been done in state legislation to make the liability efficacious, but there has been a slight movement in that direction sufficient to indicate the reasons for the failure to produce the results intended, and to point out the course which future remedial legislation will probably take.

In the first place, it has long been held by the courts that the statutory liability is directly to the bank's creditors and not to the bank itself as a corporation. In this respect it differs from an unpaid stock subscription, which is held to be an asset of the bank, and collectible by it before insolvency. As a consequence of this view, it has been held that in the absence of statutory provisions, the rereceiver of a failed bank, who succeeds to the rights of the corporation, can collect an unpaid stock subscription, but cannot enforce the statutory liability, since it is not an asset of the bank.[8] There are two distinct lines of decisions as

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[6] The list includes: Rhode Island, Pennsylvania, New York, Maryland, West Virginia, South Carolina, Florida, North Carolina, Kentucky, Louisiana, Kansas, Nebraska, North Dakota, South Dakota, Oklahoma, Michigan, Minnesota, Wisconsin, Iowa, Illinois, Ohio, Indiana, Wyoming, Colorado, Utah, New Mexico, Washington.

[7] The most notable exception is Missouri, whose constitution, Art. XII, sec. 9, restricts liability to "the amount of stock owned." Some Southern states, notably Virginia, Mississippi, Louisiana, Tennessee, lack this feature of banking regulation. With the exception of Louisiana, these are states chartering banks under an undifferentiated incorporation law.

[8] The courts in Washington have taken an opposite view; Watterson vs. Brook, 15 Wash. 511.

to the method which creditors must adopt in order to secure the payment of the liability. The first is that the remedy is by an action at law. In such a suit, the creditor sues for himself, some one or more of the stockholders of the bank. The creditor who first brings suit obtains a favored position with respect to others. This was the method followed under the New York antebellum law for some years.[9] The objection to the law action is that the proceeds of the liability should be divided among all creditors, and one should not be permitted to get, by superior diligence, a more than proportionate share of whatever may be collected. In a struggle for priority, creditors for small amounts fare badly. Another objection to the remedy at law lies in the fact that suits are multiplied. Each creditor must maintain a separate suit. In a very early case in Massachusetts,[10] it was held that the suit at equity was the proper proceeding, since in this way, all parties could be joined in one action, and the proceeds might be distributed proportionately. The equitable remedy has proven so slow and costly in practise,[11] that it affords little security to the creditor, although more than the action at law, it seems in harmony with the general trend of banking legislation which is toward putting all creditors on an equal footing.[12] The suit at equity has been adopted by the majority of the state courts as the preferable remedy.

The impracticability of leaving the liability to be en-

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[9] Bank of Poughkeepsie vs. Ibbetson, 34 Wend, 473.

[10] Crease vs. Babcock, 10 Metcalf, 125.

[11] The Ohio Supreme Court said: "By reason of the great number of stockholders, the frequent transfers of stock, the decease of parties, and of other causes, delays, vexatious expensive and almost interminable seem to be inevitable in such proceedings, so much so that such liability has grown to be looked upon as furnishing next to no security at all for the debts of the bank." 44 Ohio St. 318.

[12] This tendency is seen in the prohibitions of executions and preferences contained in the national bank act and several of the state laws, the design being to have assets divided proportionately among creditors.

forced by creditors was recognized in the antebellum banking laws of several states. The New York act of 1849 gave the receiver of an insolvent bank the power to enforce the liability. The same thing was effected in Massachusetts[13] and Maine[14] by somewhat later statutes. The national banking act contains the same provision. In the majority of the states, however, the liability was enforceable until quite recently exclusively by the creditors. It has only been since the revival of state bank regulation that any improvement has been made in this respect, and the tendency is to continue the earlier line of development, and transfer the right to collect the liability to the receiver.[15] There seems a general consensus of opinion that the receiver can collect the liability more cheaply and quickly than the creditors.[16]

Unless there are statutory provisions to the contrary, it is a general rule of law, with few dissenting decisions, that the statutory liability is a secondary, and not a primary, one. The stockholder is not responsible to the creditor as a principal, but only after the assets of the corporation have been exhausted. The liability cannot be enforced until it has been ascertained, and it is necessary, therefore, that the affairs of the insolvent corporation shall be well ad-

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[13] Mass. (1860), chap. 167, secs. 1, 2.

[14] Me. (1855), chap. 164.

[15] Such laws are: N. Y. (1897), chap. 441; Neb. (1895), chap. 8, sec. 35; Kan. (1898), chap. 10, sec. 14; Ia. (18 G. A.), chap. 208; Wis. (1897), chap. 303, I, sec. 7 (this act was defeated, however); Minn. (1895), chap. 145, sec. 201; Mich. (1889), Act. 205, sec. 46.

[16] The Supreme Court of Washington, in Watterson vs. Masterton, 15 Wash. 511, said: "If any proof had been needed that the method pointed out in that opinion for enforcing the contingent liability (*i. e.*, by receiver) was demanded by public policy, and was in the interest of all classes interested in the bank, such proof is furnished by the record in this case. After great expense, and the waste of much time for the purpose of establishing the facts necessary to authorize the enforcement of the liability in behalf of creditors against stockholders, such creditors were in no better condition than the receivers were before they had commenced this proceeding."

vanced toward settlement, before the amount due can be ascertained. Usually, therefore, a considerable time must elapse before any action can be taken which will bind the property of the shareholder. In the meanwhile, it frequently happens that the liability can be evaded by the transfer of property.[17] An efficient way of remedying this defect is to declare the liability a primary one, accruing immediately on the insolvency of the bank. It is probable, however, that the passage of such laws would bring about an evil greater than the one cured. When a bank failure occurs, there is always a check to the business of the community. A partial paralysis seizes its industrial life. At such a time, to proceed at once to collect the full liabilities of stockholders would prove a very great impediment to the rapid recovery of normal industrial activity. If insolvency of the bank imposes a lien on the property of the shareholders, much the same effect would be produced. The power of readjustment would be hampered at the very time when there is greatest need of it.

Despite the inconvenience of treating the liability as a primary one, there has been some movement in that direction. Thus, in Nebraska, it was enacted in 1895 that "such liability may be enforced whenever such banking corporation shall be adjudged insolvent, without regard to the probability of the assets of such insolvent bank being sufficient to pay all its liabilities."[18] In the interpretation of

[17] The same difficulty in the enforcement of liability was evidently felt in the antebellum systems. The appointment of a receiver in Maine constituted a lien on the real estate of shareholders to the amount of their liability. With the great increase in personal property proportionately to realty, it is doubtful if such a provision would now afford very much help.

[18] Neb. (1895), chap. 8, sec. 30. On account of constitutional provisions peculiar to Nebraska, this section has been held unconstitutional. Farmers Loan & Trust Co., 49 Neb. 353; State vs. German Savings Banks, 50 Neb. 735. The Nebraska court recognized, however, the motive leading to the passage of the act. It said: "The policy of the statute is to afford a speedy and somewhat summary remedy for creditors of insolvent banks, and to

the Iowa statute,[19] the Supreme Court has held that the liability created is primary, and it is not necessary to exhaust assets before enforcing it, but the assessment may be for the full amount, and any surplus remaining after the complete settlement of the trust, may be refunded.[20] The same view is taken of the statutes in California[21] and Wisconsin.[22] As yet, however, the old doctrine requiring the preliminary exhaustion of assets is little touched by statutory innovations.

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enable the receiver for their benefit to promptly enforce all liabilities of stockholders; . . . the danger attending upon any process requiring securities to be immediately sold often on a falling market, or at a sacrifice, or if that danger be avoided, the still greater danger of delaying resort to proceedings against stockholders until such a time that by death or insolvency the remedies become ineffectual. . . . We may further acquiesce in the position of counsel that for the effective winding up of insolvent banks, and the protection of depositors, a remedy against stockholders should be permitted before, by the slow process of liquidation, other assets shall have been exhausted. State of Nebraska vs. German Savings Bank, 50 Neb. 740.

[19] Iowa (18 G. A.), chap. 208.

[20] The Court said in the case of State ex rel Stone, Attorney-General, vs. Union Stock Yards Bank: "The liability for the payment to create the fund is not made to depend on the application of the fund, but on the fact of insolvency." "The liability is primarily for the full amount, subject to such an interest as will entitle him to any balance unexpended." 70 N. W. 772.

[21] Morrows vs. Superior Court, 64 Cal. 383; Hyman vs. Coleman, 82 Cal. 650.

[22] Booth vs. Dear, 96 Wis. 516.

CHAPTER VI

STATE BANK FAILURES

The final test of the safety of any system of banking is to be found in its statistics of insolvencies. The aim of legislation is to reduce the number of bank failures to a minimum, and, when they do occur, to procure the payment of a maximum percentage of claims. Unfortunately, the data in the case of state banks are of such a character as to make it almost impossible to reach any very definite conclusions as to the rate of insolvency. The states, as has been said, have been reluctant to give the officers charged with the execution of the banking laws any control over failed banks, and it is in only a few states that any official statistics are procurable on the subject.

Various attempts have been made by the Comptroller of the Currency to procure information on this point. In his report for 1879, Mr. Knox summarized the results of an investigation into failures of state, private, and savings banks occurring during the three preceding years.[1] The number of such banks failing in that period was 210, and it was estimated that 66 per cent of the claims would be paid. The eighty-one national banks which failed prior to 1879 had paid a slightly smaller percentage of claims, but the national system showed a much lower percentage with respect to the number of failures. It must be borne in mind that these figures class together state, private, and savings banks in such a way that the statistics for each class separately cannot be ascertained. At that time, of 4312 banks other than national in existence in the United States, only 1005 were state banks.[2] Consequently, these figures prove

[1] Report of Comptroller of Currency, 1879, p. 35.
[2] Report of Comptroller of Currency, 1879, p. 57. This includes trust companies.

very little as to banks in the state systems, unless it is assumed that state, private and savings banks fail at the same rate.

In 1895,[3] the Comptroller undertook another investigation of similar character to that of 1879, and in 1896, the inquiry was continued. The banks reported as having failed, were not separated into classes, but were grouped together as "banks other than national." It was found, that as far as could be ascertained, 1234 banks of this character had failed since 1863, and that they had paid under fifty per cent of the claims against them.[4] Another inquiry into the same subject, but confined to the question of the percentage of claims, was made by the Comptroller in 1899; it was found that 283 state, private, and savings banks failing between 1893 and 1899, had paid 56.19 per cent of all claims against them.[5] Evidently the statistical information contained in the Comptroller's Reports, so far as we have yet examined, is useless for our purpose, since there is no possible way of separating state banks from other classes. This fact has not always been recognized, and erroneous statements as to the relative safety of the state and national systems have resulted. The Indianapolis Monetary Commission in its report said: "The total number of national banks which have failed since the establishment of the system was, at the end of 1897, 352 or 6.9 per cent of the 5095 which had been organized. As against this, 1234 failures of state banks are known to have occurred in the same period. The total number of state banks in operation during the year 1895-1896 was 3708, adding the 1234 failed banks, a total of 4942 is obtained, and though a certain number have doubtless gone into liquidation, or for some other reason do not appear in these figures, it seems safe to say that probably about twenty

[3] Report of Comptroller of Currency (1895), Vol. I, p. 20. Id. (1896), Vol. I, p. 52.

[4] Id. (1899), Vol. I, p. 648.

[5] The number of failures in these years was more than 283, but only for these was the information as to claims procurable.

per cent of the total number of state banks organized during the period in question have failed. This would be a percentage nearly three times as high as that of the national banks which failed during the period."[6] The error made, consists in considering all of the 1234 failures as those of state banks, while that number includes at least some private and savings banks. The term "state bank" is used in the Comptroller's report but synonymously in this case with "bank other than national."[7] There is abundant internal evidence that private banks were considered by some examiners as within the scope of the inquiry. Indiana, for example, is reported as having had 77 failures since 1873, while from reports to the State Auditor, it is certain that the number of state bank failures since 1873 has not exceeded twelve, and before that time there were practically no state banks in Indiana during the period investigated. It is uncertain how far private banks are included in the tables but many of them certainly are.[8] It is quite impossible to show from such data anything as to the relative rate of state and national bank failures. It may be doubted if any system of banking in this country, even in an entire absence of regulation would show as high a rate of insolvency as that ascribed to state banks by the Commission. Regulation of the banking business is undoubtedly helpful in keeping down the number of fail-

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[6] Report of Monetary Commission, p. 277.

[7] The results of the investigation are to be found in the Report of the Comptroller of the Currency for 1896, Vol. 1, pp. 52-57. The paragraph is headed "Results of an investigation relative to insolvent state banks from 1863 to 1896" but in the headings of the tables the expression "banks other than national" is uniformly used, and an examination of the letter of inquiry sent out to the bank examiners and on the answers to which the tables rest, shows that the two terms are used indiscriminately. In the first paragraph of the letter the investigation is said to be "relative to failed banks other than national" while later on the same banks are spoken of as "these State Banks."

[8] It is significant that of the 1234 failed banks, 233 were reported as having had no capital.

ures, but to suppose that, if banks were left to go with a free rein, they would fail three times as often, is to overrate the value of governmental oversight quite as much as it has been common to undervalue it.

Fortunately we have still another source of information. Since 1892 the Bradstreet Company has furnished the Comptroller annually with information by states as to all bank failures in the country. The banks are classified into state, savings, and private. The following table compiled from this source forms the only accurate body of statistics on the subject of state bank failures.*

According to the table, 336 state banks have failed since 1892, but this does not include the entire number of insolvencies, which may properly be classed as those of state banks: 1. State and savings banks are confused to a certain extent in these returns. In some states, stock savings banks are classed as state banks, consequently a certain part of the bank failures, termed those of savings banks by Bradstreet's, should be included in state bank insolvencies. The total number of failures of savings banks was 92, and of these, 26 were in states where there was no possibility of confusion, because the state and savings banks are separated. There will, therefore, have to be added to the 336 state bank failures, 66 of stock savings banks. 2. In one year, 1892, the returns of Bradstreet's, as given in the table, do not cover the entire period, but only extend over six months. The Comptroller, in his report for 1893, page 13, gave the number of state bank failures for the latter half of 1892 as eighteen. Making these additions, the total number of insolvencies of state banks for 1892-1899 is

* The statistics of assets and liabilities given by Bradstreet's are, from the nature of the case, merely estimates, and are not included in the table. The statements as to number of failures have been compared, wherever possible, with returns of insolvencies in official reports, and, with an exception noted below, found to be highly accurate. Since the method of collecting the returns used by Bradstreet's is the same everywhere, it seems probable that, taken as a whole, the reports are correct.

STATE BANK FAILURES 1892-1899.

States.	1892	1893	1894	1895	1896	1897	1898	1899	Total.
Maine	..	..	..	..	..	1	..	..	1
N. H.	..	..	..	..	..	1	..	..	1
Vt.	..	..	1	..	..	..	..	..	1
Mass.	..	..	..	..	..	..	..	..	..
Conn.	..	..	..	..	..	..	..	..	..
R. I.	..	1	..	..	..	..	..	..	1
Total	..	1	1	..	..	2	..	..	4
N. Y.	1	4	2	1	..	2	..	..	10
Pa.	..	2	1	..	..	..	..	..	3
N. J.	..	1	..	..	..	..	..	..	1
Md.	..	..	..	..	..	..	..	..	..
Del.	..	..	..	..	..	..	..	..	..
Total	1	7	3	1	..	2	..	..	14
Va.	..	5	..	..	..	..	..	..	5
W. Va.	..	..	..	..	..	..	..	..	..
N. C.	..	2	..	..	..	..	..	..	2
S. C.	..	..	..	..	..	..	..	..	..
Fla.	..	1	2	..	.	1	..	..	4
Ga.	..	3	..	..	..	2	..	.	5
Ala.	..	1	.	..	..	1	..	1	3
Miss.	1	..	..	..	..	..	..	..	1
La.	1	..	..	..	2	1	..	..	4
Texas	1	..	..	..	..	1	1	..	3
Ark.	..	2	..	..	2	1	..	..	5
Tenn.	3	5	2	1	..	..	..	..	11
Ky.	1	2	3	1	..	..	..	..	7
Total	7	21	7	2	4	7	1	1	50

States.	1892	1893	1894	1895	1896	1897	1898	1899	Total.
Ohio	..	2	..	1	..	..	..	..	3
Ind.	..	10	..	..	1	..	..	..	11
Ill.	..	..	..	..	1	1	..	1	3
Mich.	1	1	..	..	..	2	..	..	4
Wis.	1	9	..	1	..	3	3	1	18
Minn.	..	9	..	2	5	4	..	..	20
Iowa	..	2	..	..	4	..	1	..	7
Mo.	1	6	2	10	9	8	..	..	36
Total	3	39	2	14	20	18	4	2	102
N. D.	See text for explanation of absence of figures and allowance for								
S. D.									
Neb.	4	10	2	18	17	6	..	..	57
Kans.	6	21	6	2	7	4	6	..	52
Mont.	..	2	..	..	..	..	..	..	2
Wyo.	..	1	..	1	..	..	..	..	2
Col.	..	5	..	..	..	1	..	..	6
N. M.	..	..	..	..	..	..	..	..	..
Okla.	..	..	2	..	..	3	1	..	6
Total	10	39	10	21	24	14	7	..	125
Wash.	..	4	2	4	5	1	2	..	18
Oregon	..	4	1	..	..	..	..	..	5
Cal.	..	7	..	..	1	..	..	2	10
Ida.	..	3	..	2	..	..	..	..	5
Utah	..	1	1	..	..	..	..	..	2
Nev.	..	..	..	..	..	..	..	..	..
Ariz.	..	1	..	..	..	..	..	..	1
Total	..	20	4	6	6	1	2	2	41
Total for U. S.	21	127	27	44	54	44	14	5	336

found to be 420. The average number of banks of this class in operation during these years was 3823. It will be noted, however, that in the table no returns are given of insolvencies in North and South Dakota.[10] The average number of banks in these states for the past eight years has been 167. Deducting this amount from the average for all the states, we have 3656 as the number to be used in ascertaining the rate of insolvencies. It seems, therefore, that over eleven per cent of the average number of state banks in operation failed during the period from 1892 to 1899. In the same time, 225 national banks became insolvent, while the average number of such banks in operation was 3703, so that the percentage of insolvencies was six, or a little over one-half of that of the state banks.

At first sight, this seems to prove conclusively the much higher safety of the national system, but some consideration will lead us to see that the difference is by no means as significant as it appears. The period which the statistics cover was an abnormal one. The most lengthy and severest depression known in the history of the United States extended over the greater part of these years, and it is a well-known fact that the crisis was most keenly felt, and had its greatest effect, in those parts of the country in which the state banks are numerically strongest. The mass of banks, incorporated under state laws, are found in the Southern, Western, and Pacific states. The state systems are also comparatively strong in the Middle States, with the exception of Illinois, Indiana, and Ohio. Out of a total of 4200 state banks nearly 3500 are located in these groups. On the other hand, of 3590 banks in the national system in 1899, only 1570 are in these sections. The importance of this fact cannot be exaggerated in its effect on the statistics of insolvencies since 1892. On the one hand, five-sixths of the state banks are in those states which suf-

[10] This was caused by the fact that state laws forbid the collection of such information.

fered most from the depression, while less than one-half of the national banks are located there. Apart from any question of superiority of systems, economic conditions have powerfully affected the statistics of failures.

It is possible to determine more exactly what effect this difference in situation has had on the figures embodied in the table. Of 225 failures of national banks, 164 were in the sections named, and as has been said, the number of national banks located there was 1570. The rate of failures was, therefore, somewhat in excess of ten per cent. We may conclude then that section by section, the national system has a superiority over the state systems of little more than one per cent.

It must also be borne in mind that the regulation of state banks is by no means homogeneous in efficiency. In the figures given, state banks are indiscriminately mingled. It is fair to assume that state regulation promotes safety, since on no other ground can the national system be supposed to be superior. The period from 1887 to 1899 was most prolific in laws providing for state inspection. Practically, we may say state banking began as a system in the former year. It is reasonable to infer that this legislation has tended to the safety of banks. Considering all this, it may be safely asserted that the figures do not prove that state banking, wherever proper safeguards are provided, is any less safe than national. Even taking good with bad, the advantage of the national system in superior safety seems small.

This view of the question is confirmed by the expressed opinion of the head of one of the largest state systems. The Superintendent of Banking of New York said some years since:[11] "The Comptroller of the Currency, in his last report to Congress, in making a comparative statement of the percentage of failures between national and state banks, seems to be unable to make the result favorable to

[11] Report of Superintendent of Banking (N. Y.), 1893, page XXI.

the national banks without including under the head of state banks, also private banks and bankers, and in many of the states, loan and trust companies . . . . which are under no supervision whatever. The comparisons should therefore be disregarded as unfair and unjust. From some knowledge of the subject, I venture to say that if a comparison is made between national banks and the incorporated state banks only of various states of the Union, the showing will not be unfavorable to the state banks."

PART II.—THE STATE BANK AS A CREDIT AGENCY

CHAPTER I

THE GROWTH OF STATE BANKING

During the past twenty years there has been a remarkable increase in the number of state banks. This growth, however, has been little remarked since correct statistics have not been readily accessible.[1] Thus, the Comptroller of the Currency recently said,[2] "By reference to the statement of the resources and liabilities of the state banks from 1873 to 1897 it will be noticed that with but one exception there has been an uninterrupted increase in the number of banks reporting, which is due rather to legislative action providing for the collection of banking statistics than to an actual increase in the number of existing banks, although there has been a normal increase each year." The latter part of this statement is entirely inaccurate. The increase of state banks shown by the successive annual reports of the Comptroller is an actual growth and not a mere phantasm of increase caused by the increasing accuracy of the reports. The Comptroller has neglected to consider the increase which took place in the majority of states before official reports were begun. For example, according to reliable unofficial sources, Tennessee had eighteen state banks in 1877 and one hundred and thirty-nine in 1899.[3] Up to the latter year, the Comptroller's reports, which are based almost exclusively on official data, showed only a small number of banks in this state. If in

[1] See below, p. 108, *et seq.*

[2] Report of the Comptroller of the Currency, 1897, Vol. I, p. xxxiii.

[3] See Appendix, p. 114.

1899, Tennessee had inaugurated a system of bank supervision, the interpretation put by the Comptroller on the resultant increase in the number of state banks reported would be that it was caused by "legislative action providing for the collection of banking statistics"; that the banks had always been there but had only now come to be reckoned. This would be very nearly a true explanation of the large apparent increase for that particular year but not of the growth since 1877. The true state of the case is that the numbers of state banks as given by the Comptroller for successive years, do show a real increase but they reflect it only spasmodically and indirectly. The following parallel columns show this quite clearly.

Years.	No. of state banks as given in the Report of the Comptroller of the Currency.	Approximately correct number of state banks.[1]
1877	592	823
1878	475	815
1879	616	814
1880	620	816
1881	652	820
1882	672	848
1883	754	937
1884	817	1022
1885	975	1120
1886	849	1214
1887	1413	1526
1888	1403	1732
1889	1671	2093
1890	2101	2552
1891	2572	3051
1892	3191	3457
1893	3579	3662
1894	3586	3662
1895	3774	3767
1896	3708	3877
1897	3857	3937
1898	3965	4008
1899	4191	4215

[1] See explanatory note to appendix for method of obtaining figures in this column.

It will be seen that the increase in the number of state banks has been especially rapid since 1886. In that year they were far outnumbered by both private and national banks, but in 1899, they formed the most numerous class

of banks in the country. The following table shows the number of private, state and national banks at certain dates:[4]

	1879	1884	1889	1894	1899
National,	2055	2550	3158	3786	3590
State,	814	1022	2093	3662	4215
Private,	2545	3458	4215	3844	4168

Of the whole number of banks of discount and deposit operating in the United States on January 1, 1900, considerably over one-third were incorporated under state laws while in 1879 less than one-sixth were of that character. A class of banks which has gained so rapidly on its competitors cannot properly be said to have been experiencing merely a "normal" increase.

The rate of increase of state banks, however, has by no means been the same in the different sections of the country.[5] In the New England States, the number of state banks is less than it was in 1877. Under the early provisions of the national bank act, the amount of circulation was limited and apportioned in fixed sums among the states. In the Eastern States this limit was soon reached and new banks were debarred from the profit to be obtained on note issue. The result was that the number of state banks was increased somewhat but on the removal of the restriction on circulation, the banks went over in considerable numbers to the national system. In 1877, there were 227 banks, organized under the state laws, in the Eastern States; by 1887, the number had fallen to 202. Since that time, there has been some growth of state banking in these states but chiefly in New York. Of a total increase of 131 banks in the group since 1887 over two-thirds

[4] The figures for national banks are from the Report of the Comptroller of the Currency, 1900, Vol. I, p. 255; the numbers of private and state banks are taken from the tables contained in the Appendix.

[5] This and the following observations are based on the statistics of state banks contained in the Appendix, pp. 114, 115.

are in that state. Compared with the growth in the country as a whole, this increase is almost negligible. It may be said that the New England and Eastern States seem to have no need for state banking.

The case is not much different in the more southeasterly of the Middle States. The growth here, while apparently considerable, has been largely in savings banks in Ohio. Of the 144 state banks reported for that state in 1898 about 90 were of that character.[6] In both Indiana and Illinois there has been a moderate increase in state banks, using the term in its strict sense.

Leaving Illinois, one enters the field of greatest importance for the development of state banking. The remaining states of the Middle West, the Southern, Western and Pacific States show since 1877 an enormous expansion in the numbers and importance of state banks. In all this great territory there is hardly a state with the exception of Texas,[7] in which the relative and absolute importance of state banking has not grown decidedly during the period under consideration. In the following table the number of state banks is given for each group of states for the years 1877 and 1899:

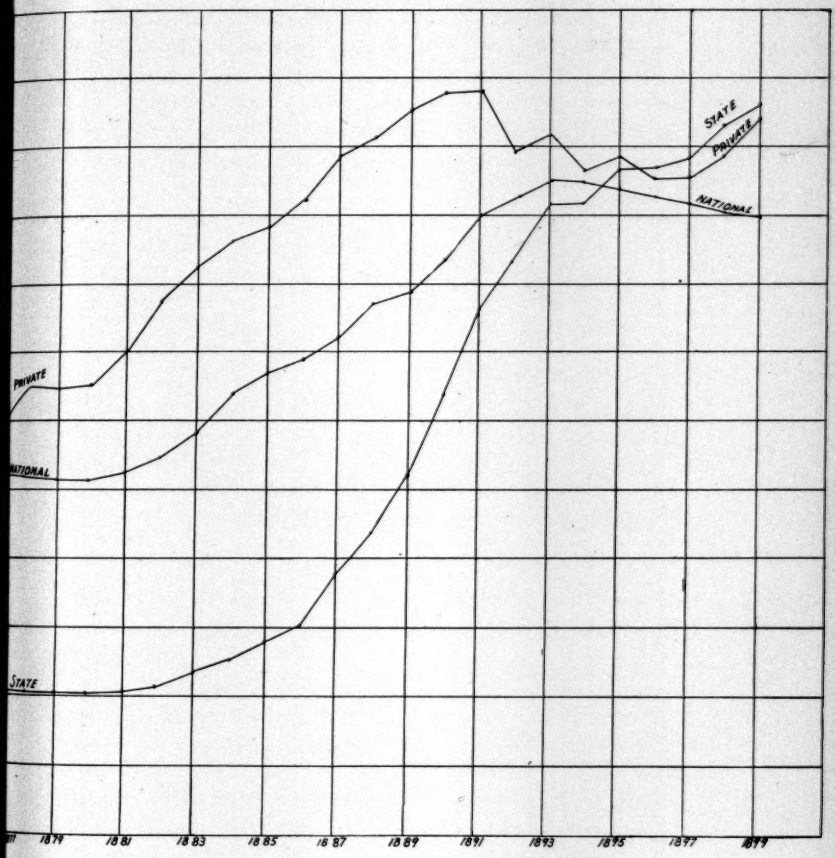
	1877	1899	Percentage of increase.
New England States,	27	22	—19
Eastern States,	227	333	47
Ohio, Indiana, Illinois,	87	358[8]	312
Other Middle States,	201	1194	495
Western States,	39	956	2351
Southern States,	197	1077	446
Pacific States,	45	275	511
	823	4215	412

[6] Knox, "History of Banking in the United States," p. 690.

[7] See p. 15.

[8] Of these 358 banks, not more than 270 are banks of discount and deposit.

DIAGRAM SHOWING NUMBER OF PRIVATE, STATE AND NATIONAL BANKS, 1877-1899.



It will be readily seen that the growth of state banks since 1877 has been considerable only in the four last groups while in the first three it has been of small importance.

Not only in the growth of state banks but also in their present importance compared with national and private banks the same broad division of the states may be made. The following table shows the relative strength in numbers and capital of the three classes of banks for the year 1899:[*]

TABLE SHOWING THE NUMBER AND CAPITAL OF NATIONAL AND STATE BANKS BY GROUPS OF STATES FOR THE YEAR 1899.[1]

Group.	National Banks (Dec. 1, 1898.)			State Banks.			Private Banks.
	Number.	Capital in millions of dollars.	Average Capital in thousands of dollars.	Number.	Capital in millions of dollars.	Average Capital in thousands of dollars.	Number.
New England.....	583	156.4	268	23	3.7	161	198
Eastern.....	956	192.1	201	333	42.8	128	813
Ohio, Ind., Ill.....	583	95	163	358	26	72	1108
Other Middle States...	461	63.1	135	1194	54.5	45	1237
Southern.....	538	63.9	119	1077	60.7	56	416
Western	346	31.1	90	956	16.5	17	301
Pacific.....	123	20	163	275	35	127	95

[1] The figures for the number and capital of national banks are taken from the Report of the Comptroller of the Currency; those for the number of state and private banks from the tables in the appendix. The capital of state banks has been estimated from data in the Report of the Comptroller of the Currency on the assumption that omitted banks have the same capital as those reporting in each group.

In the New England, Eastern, and the more southeasterly of the Middle States, neither in numbers nor in capital do the state banks equal the national ones, although it is to be noted that they gradually increase in importance in the groups in the order named. In every other section of the country the state banks are at least twice as numer-

[*] Capital is not given for private banks since in only a few states can even approximate estimates be obtained.

ous as the national banks and approximate them in the capital invested; in one case, that of the Pacific states, surpassing them.[39]

The growth of state banks shows three fairly well-defined periods since 1877. Until 1885 the increase was by no means rapid, the average yearly accessions being about forty. From 1885 to 1893, the growth was enormous. During this period, about 300 new banks came into the state systems each year. The consequence was that in those eight years the number was trebled. Since 1893 the increase has been slower.

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[39] Prof. Dunbar pointed out the same facts in somewhat different form in an article in the *Quar. Jour. Econ.* for Oct., 1897. The statistics used by him were taken entirely from the reports of the Comptroller of the Currency and consequently differ in some respects from those used here.

CHAPTER II

CAUSES OF THE GROWTH OF STATE BANKS

Since private and national as well as state banks are banks of discount and deposit, the disproportionate increase of state banks must be explained by their superior advantages over one or both of the classes competing with them. It must be noted, however, that the national and private banks have almost exclusive fields of operation, for very few private banks have a capital sufficiently large to enable them to organize under the national bank act.[1] The state bank on the contrary is a rival of both the other classes since its capital requirements are in many cases low enough to make it possible for private banks to become incorporated if they desire to do so. The causes, then, which have led to the increase of state banks may be divided into two categories accordingly as they have been influential in giving the state bank an advantage over the private or the national bank.

State *versus* Private Bank.—There are two distinct functions which private banks fulfill, (1) as an adjunct of the brokerage business in large cities; (2) as a means of furnishing credit in small communities, chiefly in agricultural

[1] According to the returns made to the internal revenue officials in 1882, the average capital of private banks in the United States was $33,000. In the Middle States, where they were numerically most powerful, the average capital was under $20,000. It is impossible to ascertain for all sections the average capital of private banks at the present time, but it is improbable that it is higher than $15,000 for the whole country. This estimate is based on the returns made under the internal revenue law of 1898. (Report of the Comptroller of the Currency, 1899, Vol. I, pp. 298, 299,). State and private banks are confused, but since for many states the number and capital of state banks are known, that of private banks can be found. In the Middle States the average capital of private banks is estimated by this method to be considerably below $10,000.

sections. It is in the latter of these capacities that they enter the same field as the small state banks. The chief characteristic of both classes is small capitalization. In a section with a sparse population, if banks are to be had at all, they must be of small capital, since the business which can be obtained does not justify the investment of large sums. If the banks can issue currency, their field of operation can be somewhat extended beyond that of banks doing only a discount and deposit business and their average capital may profitably be somewhat higher.

The westward extension of the settled area in this country has continually called into existence banks of small capital. In 1850 the banks of Ohio, Indiana and Illinois, even those issuing notes, were small compared with similar credit agencies in the East. There is evidence also, although statistics cannot be cited that even the $25,000 banks of Ohio, Indiana and Illinois, although they were banks of issue, were too large to be profitably operated in places having only a small banking business.[1] Private banks were, therefore, set up in many of the villages. When the national bank usurped the place of the state bank, a still wider field was created for the private bank since under the national act places which could not profitably employ a banking capital of $50,000 were forced to resort to private institutions. It is true that the old state banking acts remained on the statute books, but their provisions were entirely unsuited to banks doing only a discount and deposit business. The rapid settlement of the West which followed the Civil War required an ever-increasing number of small banks, and since the state laws were framed on the theory that the government could properly concern itself only with banks of issue, private banks had almost a monopoly of the banking business in the smaller centers. The following

[1] Thus in Davis vs. McAlpin (1858), Ind., 10; 137, the Court said: "Private banks of discount and deposit must have existed to a very limited extent, if at all, in the early period of our legislation. But in later years, they have become numerous and are discharging a large portion of the banking business."

table shows with what rapidity, under these conditions, the growth of private banks proceeded:

NUMBER OF PRIVATE BANKS[2]

1877	2432
1888	4064
1899	4168

In the period 1877-1888 the rate of increase was nearly sixty-eight per cent, but from 1888 to 1899 it was less than three per cent. This has come about despite the fact that the private banks in the larger cities have been continually growing. The diminution in the number of private banks in the small towns has nearly counterbalanced the increase of broker's banks. That this check to the growth of private banks has been caused in considerable degree by the preference for the chartered bank is evident if one considers the growth of state banks of small size, as shown in the following table:

NUMBER OF STATE BANKS HAVING A CAPITAL OF LESS THAN $50,000[3]

1877	187
1888	747
1899	2529

The chief reason for the partial supplanting of the private bank is the advantage of the corporate form of organization in giving greater security to the depositor and consequently increasing the credit of the bank. The desire to obtain a charter cannot become effective, however, unless the capital requirement is sufficiently low to permit the private banks profitably to make the transformation. If the business of a locality will only support a bank with a capital of $5000, and the state laws require a minimum capital of $25,000 for an incorporated bank, the extra credit which might be obtained will not be a sufficient inducement to bring about the change to the state system. The lowering of the capital requirements[4] has consequently

[2] See table, p. 82. [3] See table, p. 82. [4] See ante, p. 27.

been a potent cause in furthering the growth of small state banks.[5] The following self-explanatory table enables us to see in what sections and to what extent the state bank has displaced the private bank.

NUMBER OF PRIVATE BANKS AND OF SMALL STATE BANKS (*i. e.* HAVING A CAPITAL OF LESS THAN $50,000) BY STATES FOR THE YEARS 1877, 1888, 1899.

States.	1877.		1888.		1899.	
	State Banks, less than $50,000 Capital.	Private Banks.	State Banks, less than $50,000 Capital.	Private Banks.	State Banks, less than $50,000 Capital.	Private Banks.
Me.	..	8	..	12	..	8
N. H.	..	2	..	3	..	2
Vt.	..	1	..	2	..	1
Mass.	..	52	..	74	..	160
Conn.	..	14	..	19	..	16
R. I.	..	5	..	7	..	11
Total N. E. States	..	82	..	117	..	198
N. Y.	..	289	12	256	63	446
N. J.	..	10	8	6	..	4
Pa.	30	306	..	243	..	316
Md.	..	23	2	19	6	43
Del.	..	3	..	3	..	4
Total Eastern States.	30	631	22	527	69	813
Va.	18	30	24	30	47	27
W. Va.	6	8	12	3	47	4
N. C.	..	9	4	23	29	24
S. C.	2	19	8	22	29	19
Ga.	3	39	4	71	42	42
Fla.	..	8	1	27	13	11
Ala.	..	17	1	49	8	34
Miss.	2	21	3	15	56	5
La.	..	7	..	14	36	8
Texas	3	73	3	130	.	187
Ark.	..	12	8	20	63	14
Tenn.	10	10	10	20	83	9
Ky.	11	36	27	36	76	32
Total Southern States.	55	289	105	460	529	416

[5] A "small state bank," in the sense in which the expression is used here and in the following pages, is one having a capital of less than $50,000.

States.	1877.		1888.		1899.	
	State Banks, less than $50,000 Capital.	Private Banks.	State Banks, less than $50,000 Capital.	Private Banks.	State Banks, less than $50,000 Capital.	Private Banks.
Ohio.....	16 *a*	219	15 *a*	250	51 *a*	287
Ind.....	2	111	11	156	47	222
Ill.....	..	282	2	441	86 *b*	599
Mich.....	2	131	17	220	80	249
Wis.....	12	70	28	102	87	120
Mo.....	25	104	141	122	390	110
Minn.....	6	49	29	152	114	239
Iowa.....	13	201	49	423	120	519
Total Middle States.	76	1167	292	1866	975	2345
Kans.....	14	84	120	365	259	81
Neb.	2	30	104	306	313	65
N. D.	2	8	50	196	103	2
S. D.....					94	57
Mont.....	..	5	..	11	5	21
Wyo.	2	5	1	12	6	12
Col.	1	25	17	69	20	55
N. M.	..	4	2	10	5	7
Okla.	..	..	..	..	56	1
Total Western States.	21	161	294	969	861	301
Wash.	..	2	2	14	17	24
Or.	..	6	2	21	15	20
Cal.	5	65	26	52	44	29
Ida	..	3	2	16	8	9
Utah.....	..	7	..	8	4	11
Nev.....	..	18	1	10	2	2
Ariz	..	1	1	4	5	1
Total Pacific States.	5	102	34	125	95	95
Total U. S.	187	2432	747	4064	2529	4168

a Excludes savings banks. *b* Includes savings banks.

NOTE.—The table is constructed from data found in the various state bank reports and in Homans' Bankers' Almanac.

It will be seen that during the past twenty years private banks have been of small importance in the New England and Eastern States. The greater number of them are lo-

cated in the cities. Similarly there are very few state banks in these sections with a capital of less than $50,000. It is only in New York that the small state bank is found in considerable numbers. This is partly accounted for by the fact that in Pennsylvania and New Jersey the minimum capital for state banks is $50,000. Whatever demand for small banks there has been in these groups has been met by private banks. That it has not been great is evidenced by the small number in existence. The stage of development reached makes small banks unnecessary.* The $50,000 bank fills the needs of this section. Neither the small state bank nor the private bank appears to have any future so far as these states are concerned.

In the Southern States the number of private banks in 1877 was 289 while there were only 55 state banks of small capital. The gradual movement toward incorporation, facilitated by the adoption of general laws, has caused a complete change in the relative position of the two classes, so that in 1899 the state banks were in the ascendancy, and if the large number of private banks in Texas is deducted, it appears that the small state banks are twice as numerous as their rivals.

It will be noted that in 1899 considerably more than one-half of the private banks in the country were in the Middle States. Even in 1877, they were well established in this section, numbering 1167 as against 106 of the small state banks. It is here that the chartered bank has made relatively its least advance. The high capital requirements which have never gone below $10,000 in any state in this group, and in most of them not below $25,000 has kept the

* Under the amendment to the national act passed March 14, 1900, up to Sept. 30, 1901, there were organized in the New England and Eastern States seventy four banks with a capital of less than $50,000. Of these, thirty-seven were in Pennsylvania and ten in New Jersey. It appears that there is but small room for the $25,000 bank in any state in these two groups. In all the New England States only four such banks were chartered.

greater part of the banking business in smaller communities in the hands of the private bankers. That this has been the chief hindrance to the absorption of these banks into the state systems is clear from the fact that in those states where the required capital is placed at a high sum the number of private banks is relatively greater.[1]

	No. of State Banks with less than $50,000 capital.	Private Banks.	Total	Per cent of Private Banks.	Minimum Capital required for State Banks.
Ohio,	51	287	338	.85	$25,000
Indiana,	47	222	269	.84	25,000
Illinois,	86	599	685	.87	25,000
Iowa,	120	519	639	.81	25,000
Michigan,	80	249	329	.76	15,000
Wisconsin,	87	120	207	.58	15,000
Minnesota,	114	239	353	.67	10,000

The Western Group is the one in which the conflict of the private and the small state bank has been keenest and in which the state bank has almost vanquished its rival. Since 1888, the private banks in this section have declined rapidly in numbers. There have been two causes for this transformation in the character of the banks. In the first place, the necessary capital for the organization of an incorporated bank is low, being only $5000 for the distinctively agricultural states in this group. But there has been something more than mere preference for the corporate form of organization which has brought about an almost complete abandonment of private banking. The growth of the small state banks has been much forwarded here by legislation, which has had the effect of causing the private banks in large part to become incorporated. In order to understand the purpose and cause of these laws, it will be necessary to examine them in some detail.

[1] Missouri is included among the Western States since it is similar to them in requiring private banks to have a capital. This, as will be shown below, has a considerable effect in influencing private banks to become incorporated.

The regulation of the business of unincorporated bankers is an outgrowth of the general change in feeling as to the nature of the banking business. The view that banking, even when confined to the discount and deposit functions is charged with a public use has caused restrictions to be imposed on it, although carried on by an individual. This regulation assumes several phases. In the first place, it has been urged in several states that a private banker should not operate under a corporate name. This argument has had especial force in states where incorporated banks are under state supervision. It has been thought just that the public should know with what form of banking institution it is dealing. It appears to be quite common in some sections for private banks to assume names which indicate that they are incorporated. The Public Examiner of Minnesota called attention to the fact that in 1886, of 126 private banks carrying on business in that state, 116 had corporate names.[8] The laws of New York,[9] Minnesota[10] and Washington[11] impose no other restriction on private bankers. In a few states the regulation of unincorporated banks has gone no farther than the requirement of reports. This is the case in California[12] and Mississippi.[13] This and the preceding provision evidently aim only at the information of the public; they do not profess to effectively safeguard the banking business.

In still another group of states, private banks are put on the same footing with incorporated banks as to supervision and regulation. Such is the case in North Carolina,[14] New Jersey[15] and Wisconsin[16] which require private banks to

[8] Seventh Report of Public Examiner of Minn., 1886; see also Reports of Commissioner of Banking (Mich.), 1892; 1893; 1894.
[9] Laws of New York (1882), ch. 409, No. 311.
[10] Laws of Minn. (1887), ch. 39.
[11] Laws of Wash. (1891), p. 130.
[12] Laws of Cal. (1887), p. 90. [13] Laws of Miss. (1888), p. 29.
[14] Laws of N. C. (1887), chap. 175.
[15] Laws of N. J., (1895), chap. 361.
[16] Laws of Wis. (1895), chap. 291.

be examined and to make reports.[17] In 1897, Georgia subjected private banks to the same requirements that state banks were under, but this law was repealed in 1898.[18]

Supervision of private banks is carried on under difficulties which render it much more imperfect than in the case of incorporated banks. It has already been pointed out that the fundamental safeguard under the systems of bank regulation used in the United States is a capital. Our whole scheme of supervision is built on that requirement, and under the laws in vogue in most of the states of the Union, a private banker is not required to have any specified amount of capital. In the last group of states to be considered it is this defect which an attempt has been made to remedy. Missouri was the first state to adopt this policy. By act of 1877, private bankers are prohibited from engaging in the business of banking without a paid-up capital of not less than five thousand dollars, and they cannot employ their capital otherwise than as banks of discount and deposit are permitted to do.[19] By the act of 1895[20] they are subjected to the same supervision as incorporated banks, and it is made the duty of the examiner to proceed against them in case of impairment of capital. The same plan of securing a capital has been tried in Nebraska. The capital required for incorporated and unincorporated institutions for banking is of equal amount, and in every respect, except the ownership of real estate, the same restrictions are placed on the two classes of banks.[21] When the first Kansas act for the regulation of the banking business was passed, it included, practically, the same feature.[22] Section 35 makes private banks "amenable to all

[17] Laws of Ga. (1897), p. 59. [18] Laws of Ga. (1898), p. 12.

[19] Private bankers were defined as those "who carry on the business of banking by receiving money on deposit, with or without interest . . . and of loaning money without being incorporated." Revised Statutes (1879), sec. 921.

[20] Laws of Mo. (1895), p. 97.

[21] Laws of Neb. (1889), chap. 37, and id. 1895, ch. 8.

[22] Laws of Kan. (1891), chap. 43, sec. 35.

the provisions of this act," and this has been construed so as to require such banks to have capital of the same amount as incorporated banks.[23] More recently Kentucky has adopted the same policy: a minimum capital of $10,000 is required for private banks,[24] and in the Utah Revision of 1898 the Kentucky provisions are copied,[25] except that the amount of capital required varies with the size of the population of the place in which the bank is located.

But in almost all of these states a difficulty has presented itself which seems to make the requirement of capital but a small protection to the depositor. The private banker is frequently engaged in other business besides that of carrying on the bank, and in the event of his failure, creditors other than depositors come in for a share of the assets. A corporation, on the other hand, cannot engage in business other than that prescribed by its charter. In Missouri and Kentucky the law forbids the private banker to use any of his funds in other business, but he may use other funds, and even without actually engaging in any other business, he may accumulate an indebtedness which may prove a severe charge on the banking assets. In a recent case in Nebraska, it was held that under the law in that state, "an unincorporated bank, exclusively owned by a private individual, is not a legal entity, even though its business be conducted by a president and a cashier, and that in such a case, the assets of the bank represent merely the portion of the owner's capital invested in banking, and he may law-

[23] The Commissioner, in his report for 1892, p. 1, recommends that "as to the rights and duties of private banks, the law should be made more definite. While secs. 17 and 35 recognize the rights of individuals or partners to do a banking business without incorporating, yet the other sections of the law seem to have been framed for application to incorporated banks only; hence, in the construction of the law as to its application to private banks, it requires not only a constant recollection of sec. 35, but a vivid and analytical imagination as well."

[24] Laws of Ky. (1893), chap. 171, pp. 62, 63, 64, 65.

[25] Revised Statutes of Utah, 1898, sec. 380.

fully dispose of them to pay or secure the just claims of any of his creditors."[26] In Kansas this question was met by an enactment in the law of 1897 that "Any individual or firm doing business as a private bank shall designate a name for such bank, and all property, real or personal, owned by such bank, shall be held in the name of the bank, and not in the name of the individual or firm; all of the assets of any private bank shall be exempt from attachment or execution by any creditor of such individual or firm until all liabilities of such bank shall have been paid in full. No private banker shall use any of the funds of the bank for his private business."[27] This makes of the private banker in Kansas a corporation, to all intents and purposes, except that his liability is unlimited, and that he has no perpetuity. It is practically the creation of a new sort of corporation. The same difficulties have manifested themselves in Wisconsin, where no capital is required for private banks. The State Examiner, in his report for 1899, page xii, says: "The main difficulty in supervising the private bank is that . . . the individual, or firm, or individual members of the firm may be indebted to outside parties to such an extent as to cause the person or firm to be insolvent." He doubts, however, whether it would be constitutional to prohibit a private banker from engaging in other business or to make depositors preferred creditors.

South Dakota, North Dakota and Oklahoma have dealt radically with the problem. They have passed laws requiring all persons conducting a banking business to become incorporated.[28] In both South Dakota and North Dakota the law was contested as unconstitutional, but with different results. The Supreme Court of North Dakota, in State vs. Woodmansee,[29] held that the requirement of

[26] Longfellow & Barnard, 79 N. W. 255.
[27] Laws of Kan. (1897), chap. 47.
[28] Laws of N. D. (1890), chap. 23, sec. 27; Laws of S. D. (1891), chap. 27, sec. 27; Laws of Okla. (1897), chap. 4, sec. 2.
[29] 1 N. D., 246.

incorporation was constitutional, and was a legitimate exercise of the police power. The South Dakota court took an entirely different view of the question, the gist of its decision being that banking, except with the right of issue, was not a franchise at the common law, and had not been made one by the constitution of South Dakota.[20] "Whence then," asks the court, "did the legislature of the state derive its power to farm out these privileges to corporations, and to deny to the individual citizen the right to exercise them, which he and his ancestors have from time immemorial possessed?"[21]

It is undoubtedly true that banking, even with the right of note issue, was not a franchise according to the common law. It is equally undeniable that at a comparatively early period the right of issue was confined to incorporated banks, and such banking became a franchise. The question would seem to be then by what means the transformation was effected, or, to put the matter more broadly, by what means a franchise may be created. Under our system of jurisprudence, is a constitutional provision necessary to create a franchise, or may it be done by legislative act simply? Looking at the question historically it is clear that note issue was made a franchise in many states without the intervention of constitutional provisions. In the case of Bank of Augusta vs. Earle,[22] the Supreme Court said, "The institutions of Alabama, like those of the other states, are founded upon the great principles of the common law, and it is very clear that at common law, the right of banking in all its ramifications belonged to individual citi-

[20] State vs. Scougal, 3 S. D., 55. The court also found the law unconstitutional as being in conflict with certain provisions of the state constitution guaranteeing individual rights. It was also held to be a violation of the 14th Amendment to the Constitution of the United States. These objections evidently depend on the answer to the question, "Is banking a franchise?" If that is answered in the negative, individual rights would not seem to be violated.

[21] Id. p. 57.

[22] 13 Peters, 595.

zens, and might be exercised by them at pleasure. And the correctness of this principle is not questioned in the case of State vs. Stebbins. Undoubtedly the sovereign authority may regulate and restrain this right, but the constitution of Alabama purports to be nothing more than a restriction upon the power of the legislature in relation to banking corporations, and does not appear to have been a restriction on individual rights. That part of the subject appears to have been left, as is usually, for the action of the Legislature to be modified according to circumstances, and the prosecution against Stebbins was not founded on the provisions contained in the constitution, but was under the law of 1827 prohibiting the issue of bank notes."

The view of the North Dakota court was essentially in accord with the facts in the case. The purpose of the state in requiring incorporation was to exercise more effectively its police power. The decision of the South Dakota court looks rather at the creation of the franchise. It is this difference in the view point which causes the opposition in decisions: the one court regards incorporation in our modern way as simply an instrument or method of carrying on a business, while the other looks as it as an end. The question has never come before the courts in Oklahoma, so that of two decisions, one upholds, and the other denies, the right of the legislature to require the incorporation of private banks. Regulative acts, even those requiring a capital stock, have been uniformly upheld by the courts as an allowable exercise of the police power.[28] Even in State vs. Scougal, it was said, "Assuming that the business of banking we are now considering is clothed with such a public use that it may be controlled by the State—and we think it so affected with a public interest, etc."

The question is one which is evidently exciting an increasing amount of interest; it seems clear that the best plan for the regulation of banks under the present systems

[28] Blaker vs. Hood, 53 Kans., p. 499.

of supervision lies in requiring incorporation. The Secretary of the State Board of Nebraska, in his Eighth Annual Report, commenting on the decision of the Supreme Court in Longfellow vs. Barnard, says, "The decision denies to an individual engaged in the banking business as a private banker the right to set aside any portion of his capital as bank capital upon which depositors or other creditors of his bank would be entitled to a prior lien, and makes the capital of his bank subject to all of his debts, bank and otherwise, and makes all of his property, bank capital and other, liable for any of his debts, thus placing a private bank owned by an individual as a part of any other business in which he may be engaged. If this decision is to stand as the law of this state, then should private banks owned by individuals be prohibited by law?" Also in Kansas, the present law, seemingly going as far in assimilating an unincorporated bank to a corporation as it is possible to go without requiring incorporation, does not satisfy the Commissioner, for in his report for 1897-1898, p. xi, he says, "While some very good lawyers are in doubt as to the power of the state to require all banks to incorporate, many of our ablest attorneys express the belief that it is within the power of the legislature to designate the manner in which this privilege may be exercised. I therefore recommend that our banking law be so amended as to require all banks to incorporate. If this recommendation should fail of adoption, I recommend that private bankers be prohibited from engaging in other business, and that all private bankers be required to live within the state."

The following table shows how important this legislation has been in changing the relative position of state and private banks in these states.

NUMBER OF PRIVATE AND SMALL STATE BANKS IN STATES HAVING LAWS PROHIBITING PRIVATE BANKS, OR REQUIRING THEM TO HAVE A CAPITAL.[34]

	1877		1888		1899	
	Private Banks.	Small State Banks.	Private Banks.	Small State Banks.	Private Banks.	Small State Banks.
Kansas	84	14	365	120	81	259
Nebraska	30	2	306	104	65	313
North Dakota.. }	8	2	196	50	2	103
South Dakota.. }					57	94
Missouri	104	25	122	141	110	390
Oklahoma	..	..	..	..	1	56
Total	226	43	989	415	316	1215

With regard to Missouri it will be seen that while small state banks are sixteen times as numerous as in 1877, private banks have hardly increased at all.[35] In the remaining states the number of private banks was at its highest in 1888. The decisive years were from 1888 to 1892, for it was during this period that the restrictive legislation was enacted. In those states of the Western Group in which agriculture is a less important industry than mining or stock-raising, and in most of the states of the Pacific Group, the movement toward incorporation is less marked. The capital minimum is higher and no great advance has been made in bringing private banks under supervisory control.

State *versus* National Bank.—While, as has been pointed out, legislation has been a chief cause of the growth of small state banks at the expense of private banks, no factor of the same kind has operated against the extension of national banks. Opposition to the national bank, a pro-

[34] In Kentucky and Utah the effect of the legislation is not so appreciable, since in neither state is there any large number of private banks. In Utah, moreover, the act is too recent for its full influence to be seen.

[35] About one-half of the private banks of Missouri have a capital of less than $10,000. As has been said, the minimum capital for a state bank is $10,000, and many of the private banks would probably incorporate if the minimum were lowered.

nounced feature of recent political alignments, has never taken the form of an attempt to promote a rival system. In so far as the state bank has won a place for itself by the side of the national bank, it has done so on purely economic grounds. The fundamental reason for the existence and growth of small state banks as well as of private banks is the small capital requirement. This is, however, quite inadequate as an explanation of the growth of state banks as a whole since many of them have a capital sufficiently large to enable them to enter the national system. Preference rather than necessity has made and keeps them state organizations.

There are three chief differences between the national and the state systems so far as their relative profitableness is concerned. In the first place, the national banks have the exclusive power and to a certain extent are obliged to issue circulating notes. It has frequently been shown that the provision of the national act requiring each bank "to transfer and deliver to the Treasurer of the United States . . . bonds . . . to an amount where the capital is one hundred and fifty thousand dollars or less of not less than one-fourth of the capital and fifty thousand dollars where the capital is in excess of one hundred and fifty thousand dollars" [88] imposes a hardship on those banks which do not find their circulation a source of profit. From 1887 to 1899 there was little if any advantage accruing to the banks of the South and West from the issue of notes. This result was due to the high price of U. S. bonds. The amount of circulation which could be secured was much less than the cost of the bonds which must be deposited. In order to issue $90,000 of circulation, a bank had to pledge $100,000 of government securities, the cost of which at times ran as high as $128,000. The interest on the $38,000 of difference was lost. Where the local interest rate was high, this loss was sufficient to destroy the profit on circulation. The

[88] U. S. Rev. Statutes, sec. 5159.

banks of the South and West found therefore in the privilege of issue no inducement to enter the national system.[87]

Secondly, the provisions of the state laws in regard to the character of the loans which may be made by the banks are more liberal than those contained in the national act. As has already been shown,[88] the state banks in nearly all cases are permitted to loan on real estate. Evidently, if the bank finds it to its profit to make such loans, other things being equal it will prefer the state system.[89]

Finally, since credit is the life-blood of the banking business, that system of regulation which is superior in giving to its banks the confidence of the community will attract to itself the major part of the business, unless there are counteracting forces. It is in only a few states and there within a comparatively recent period that the state systems can compete with the national in this respect. Where, however, there are a large number of state banks and the supervision is of a high order, there seems little to choose

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[87] The diminishing profit on national bank circulation has been discussed by many recent writers on banking and currency: White, "Money and Banking," p. 418 et seq.; "Report of the Monetary Commission," pp. 180-191, and by the late Prof. Dunbar, "The Bank Note Question." *Quar. Jour. Econ.*, Oct., 1892, p. 55.

[88] See ante, p. 50.

[89] In one other respect the state laws allow a freer extension of loans. The national act provides that "the total liabilities to any association of any person or of any company, corporation or firm for money borrowed, including in the liabilities of a company or firm the liabilities of the several members thereof, shall at no time exceed one-tenth part of the capital stock of such association actually paid in." (Rev. Stat's, sec. 5200). In most of the state laws there are somewhat similar restrictions, but usually the part of the capital which may be loaned to one person is larger than one-tenth. It does not seem, however, that this can be of very great influence in making organization under the state law desirable, since the national banks violate this part of the law with impunity. The Comptroller of the Currency in his report for 1900, p. xx, says: "On June 29, 1900, 1575 banks of the 3732 that were active on that date, constituting nearly two-fifths of the entire number of banks in the system, reported loans in excess of the limit allowed."

on this score between the two forms of organization. The rapid growth of state legislation designed to secure more effective control of the banking business, has undoubtedly contributed much to strengthen the state institutions by giving them better credit.

These then are the main factors which must be considered in attempting to understand the growth of state banks of large size as compared with that of national banks. It is to be noted that the importance of the first two considerations is largely determined by sectional conditions, since the rate of interest and the desirability of making real estate loans vary in different parts of the country. The last consideration is largely secondary, tending to intensify a preference proceeding from one of the other two. When for any reason a class of banks has obtained an ascendancy, the public becomes accustomed to them and use gives confidence. The following table will enable us to weigh the influence of each of these factors.

NUMBER OF LARGE STATE BANKS (*i. e.* THOSE HAVING A CAPITAL OF $50,000 OR MORE) AND OF NATIONAL BANKS BY STATES FOR 1877, 1888 AND 1899.

States.	1877.		1888.		1899.	
	State B'ks, $50,000+	National.	State B'ks, $50,000+	National.	State B'ks, $50,000+	National.
Maine.....	2	71	..	75	..	82
N. H.....	1	46	1	49	..	52
Vt..	5	46	..	49	..	49
Mass.....	..	237	..	253	..	250
Conn	4	81	8	84	8	79
R. I.	15	62	10	60	6	56
Total N. E. States....	27	543	19	570	14	568
N. Y	81	281	110	322	144	327
N. J.....	12	69	..	85	21	108
Pa.....	83	232	77	313	90	436
Md.....	15	32	7	48	6	69
Del	6	13	4	18	3	19
Total Eastern States.	197	627	198	786	264	959

States.	1877.		1888.		1899.	
	State B'ks, $50,000+	National.	State B'ks, $50,000+	National.	State B'ks, $50,000+	National.
Va.	22	19	40	26	42	36
W. Va.	9	15	14	20	28	34
N. C.	3	15	10	18	16	29
S. C.	2	12	11	16	35	16
Ga.	24	12	27	24	71	27
Fla.	..	1	3	13	13	15
Ala.	6	10	8	21	34	26
Miss.	5	..	12	12	36	12
La.	9	7	6	13	18	20
Texas	10	12	4	100	..	199
Ark.	1	2	5	7	23	7
Ky.	43	46	56	69	129	75
Tenn.	8	25	35	42	56	47
Tot. Southern States.	142	176	231	381	501	543
Deducting Texas.	132	164	227	281	501	344
Ohio.	28	165	10	219	51*a*	255
Ind.	11	99	22	94	47	115
Ill.	30	144	29	182	69*b*	217
Mich.	24	80	54	109	108	80
Wis.	12	41	36	59	46	78
Minn.	7	31	32	56	35	69
Mo.	76	30	97	50	105	63
Iowa.	18	78	77	129	87	172
Total Middle States.	206	668	357	898	548	1049
Kans.	12	15	57	160	26	98
Neb.	6	10	54	104	28	100
N. D.	..	1	24	58	3	23
S. D.					1	25
Mont.	..	5	5	17	5	21
Wyo.	..	2	..	9	..	11
N. M.	..	2	2	9	2	6
Col.	4	13	3	34	10	36
Okla.	..	..	..	..	..	8
Total Western States.	22	48	145	391	75	328
Wash.	..	..	2	24	14	31
Or.	..	1	7	27	15	28
Cal.	38	9	75	38	129	35
Ida.	..	1	1	7	4	9
Utah.	..	1	2	7	7	11
Nev.	2	..	2	2	5	1
Ariz.	..	..	4	1	2	5
Total Pacific States.	40	12	93	106	176	120
Total U. S.	634	2074	1043	3132	1578	3567

a Excludes savings banks. *b* Includes savings banks.

NOTE.—The table is compiled from the official returns whenever accessible, otherwise from data contained in Homans' Bankers' Almanac. The number of national banks is for October of each year.

Grouping the states, we find a decided preference for the national system in the New England and Eastern States. The field is more equally divided in the Middle States while in the Southern and Pacific Groups the large state banks are in the majority. Lastly, the Western States have four times as many national as large state banks. It is quite clear that an explanation based solely on the lack of profit from note issue cannot satisfactorily account for such a distribution. The rate of interest is certainly as high in the Western States as in any other part of the country. If we enter the groups, the inadequacy of such a solution becomes still more manifest. California prefers the state system while Oregon and Washington, with higher interest rates, have invested the larger part of their banking capital in national banks. If the profit made on circulation were the controlling force the preference for the state systems would be in direct proportion to the rate of interest prevailing. It is by no means true, however, that the declining profit on note issue has not been a powerful factor in causing changes to the state systems. But this influence has rather been a negative one. As long as large profits could be made on circulation, the banks could afford to forego the advantages which might be obtained by incorporation under the state laws. This is well illustrated by the case of the Southern States. Until 1888, the national banks were in the majority in nearly every state in the South, but in 1899 the state banks were much the more numerous class.[*]

Leaving out of count the great manufacturing states, if we arrange the other states of the Union according to their preference for the national as against the state systems we find that it is in almost exactly inverse ratio to their stage of economic development. Where the state as yet needs external credit for the exploitation of its agricultural resources the national bank is far more important than the large state bank. In North Dakota and South Dakota, for

[*] Excluding the Texas banks for reasons heretofore given.

example, the national bank has almost a complete monopoly of the field; the state banks being nearly all of less capital than $50,000, while in Michigan, Missouri,[41] California, and in nearly all the Southern States, the state systems are decidedly preferred by the larger banks. Wisconsin, Minnesota, Iowa, Kansas and Nebraska form an intermediate class in which the two systems divide the business more or less evenly.[42]

That these differences are closely connected with variations in the profit which can be made on real estate loans seems evident. While the amount of such loans cannot be ascertained for many of these states, the obtainable data point to the fact that in the newer states lending on real security is not practised by the banks to any large extent. In Kansas only five per cent of the total loans of the state banks are on such security, while in California the banks

[41] Mr. Thornton Cooke, in an article in the *Quar. Jour. Econ.*, Vol. xii, p. 72, "The Distribution of State Banks in the West," after examining the states of North Dakota, South Dakota, Kansas, Nebraska and Missouri, finds that in Missouri alone of these states is the state banking system preferred. He attributes this to the fact that the state banks became firmly established in Missouri while the national bank circulation was restricted. While the long existence of a system of banking has undoubtedly powerful influences, a wider study would have shown that Missouri is only a type of a whole group of states.

[42] No particular stress is laid upon the exact order in which the states are placed. In some of them, the state banks are of a composite character, both receiving savings deposits and doing a commercial business. (See Appendix, p. 112). In such states the number of state banks is naturally somewhat larger proportionately than in those states where the two classes of banks are distinct and the savings banks are not included in state banks. There can be no question also that differences among the states in the banking laws and in the efficiency of their administration produce important results. Thus, the excellent system of state supervision in Michigan has promoted the growth of state banks. It is clear, however, that between such states as Georgia, Missouri and California on the one hand, and North and South Dakota on the other, there are fundamental dissimilarities, affecting their preference for the state banks, and transcending minor causes of inequality.

make over one-third of their loans on real property."[43] It is not without significance that it was not until 1899 that the laws of North Dakota permitted the state banks to make such investments of their money. Even now in Oklahoma, the law prohibits real estate loans by the banks. If in these states any considerable profit could be derived from business of this character such laws could not be passed in the face of the almost universal practise to the contrary in other states."[44]

It is not difficult to understand why in a state largely dependent on external credit, banks find it little to their interest to make loans on real estate. In such sections the chief form of property for a considerable time is personal, consisting of animals, implements, etc. Especially is this the case where stock-raising is the typical industry. Land, in such localities has so slight a value that it has little importance as a security for loans. But even after land has acquired a commercial value, it cannot always be made the basis for the extension of bank credit. Whether it can or not will depend on the condition of the locality as to its dependence on external capital. There is an unfavorable balance of trade against every new and rapidly-developing community. Capital is being brought in and invested in improvements which will ultimately perhaps more than pay for themselves but cannot do so immediately. It is land that is offered as security for this credit. If the banks in such a locality attempt to supply this need they must settle the balance against the section and consequently will be stripped of so much of their reserves.

If a community has reached a stage where it is no longer dependent on capital from other sections or what amounts to the same thing, where it is no longer buying more than it is selling, the banks will no longer labor under the same

[43] See ante, p. 54. Note also the large real estate loans in Mo., Wis., etc.

[44] It has already been mentioned that in Wisconsin a banking law was defeated in 1898 because it restricted real estate loans.

disadvantage with respect to real estate loans. What A sends out will be compensated for by what B brings in. It is an old saying that banks cannot create capital and it finds its practical application at the present time in the inability of Western banks to make long-time loans on real estate.

There is also a positive reason for the preference exhibited in the newer states for the national bank—a reason closely connected with their need for external capital. The stock of national banks is probably a more attractive investment for Eastern capitalists than the stock of state banks. The Eastern investor is well acquainted with the provisions of the national bank act and little informed as to the state banking laws. Consequently the promoters of banks needing a larger capital than they can secure at home, organize under the national system because by so doing they can attract foreign investors. In his report for 1897 the Comptroller of the Currency analyzed the distribution of national bank shares. The following table shows the proportionate part held by non-residents for certain sections.

	Number of Shares held by		Percentage held by Non-residents.
	Residents of the State.	Non-residents.	
Southern States.....	556,483	115,169	20
Middle States.....	1,380,223	225,228	16
Western States.....	216,601	110,940	51
Pacific States.....	128,422	49,728	38

Also within the groups the less-developed states show a higher percentage of shares held by non-residents. California, for example, has less foreign investment in her national banks than any of the other states in the Pacific Group.

So far, then as the relative importance of the large state bank and the national bank is concerned, the states may be divided into three classes. In the first, comprising the New England and Eastern States together with Indiana, Ohio and Illinois, banking may be said to have reached a high degree of specialization so that banks of discount and

deposit confine themselves exclusively to loans on personal security.[45] The feature of this group of states is that manufacturing and commercial occupations are predominant. The banks are able to employ their funds fully in loaning on commercial paper. The agricultural states fall into two classes, in one of which the large state bank is preferred to the national bank because real estate loans can be profitably made, while in the other class, the national system is superior in numbers on account of the impossibility because of economic conditions of making long-time loans for permanent improvements.

A study of the effects produced by the recent amendments to the national bank act confirms the view that the decrease in the profit on circulation has not been the controlling factor in the growth of large state banks. The Act of March 14, 1900, lowered the minimum capital required for national banks in smaller towns to $25,000 and eliminated almost entirely the effect of differing local rates of interest on the profit from note issue. The latter end was accomplished by raising the amount of circulation which might be issued from 90 to 100 per cent of the par value of the bonds deposited and by refunding a considerable part of the national debt at two per cent, thus furnishing a bond on which the premium would be considerably less than on any formerly used as a basis for note issue. Thus the difference between the cost of bonds and the circulation was reduced to almost nothing and consequently the profit on bank circulation was made very nearly as large in those sections where interest is high as in those where it is low. There has resulted a considerable increase in the circulation of the national banks of the South and West.[46]

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[45] It is by no means intended to imply that a whole group of states, or even a single state, is of a uniform type. There are, of course, agricultural sections in New York as well as in Missouri or N. Dakota, and so there are some state banks in New York, but agriculture is not the industry which gives form to the greater part of the banks.

[46] See Report of Comptroller of Currency, 1900, Vol. I, pp. 343, 344.

Two courses were open to the state banks, either to enter the national system and lose the advantage of lending on real estate or to remain state banks and forego the profit to be made on note issue. Since the profit on circulation was practically the same throughout the country, the relative gains of the national system in the various sections furnish an index to the valuation placed by the banks on the privilege of making loans on real property. The following table shows the result.[47]

	State Banks with a Capital of $25,000+ active, Jan. 1, 1900.	Nat. Banks Organized from March 14, 1900 to Sept. 30, 1901.
N. Y.	207	27
W. Va.	55	12
N. C.	25	8
Fla.	13	2
Ga.	95	6
Miss.	65	2
La.	31	7
	284	37
Ill.	155	40
Mich.	157	9
Wis.	135	18
Minn.	57	28
Iowa.	207	53
Mo	197	9
	908	157
Kans	84	21
Neb.	100	20
N. D.	12	12
S. D.	16	9
Okla	6	37
	218	99
California	147	9

During the time the act has been in operation there has been in most parts of the country a steady betterment in

[47] The table is compiled from the state bank reports for the date nearest to Jan. 1, 1900, on which the banks reported. Only those states are included for which official returns were obtainable. The numbers of national banks organized are taken from the leaflet issued by the Comptroller of the Currency on Sept. 30, 1901.

business conditions, in consequence of which many new national banks would have been formed without legislation; but it is clearly true that to some extent banks have been induced to leave the state systems and organize under the national law. The noteworthy point is that the gains have been made in those states where the national bank was already strong. The newer states have transformed their $25,000 state banks into national banks. Thus in North Dakota and South Dakota, of the twenty-one banks organized, twenty were of less capital than $50,000 and the only reason seemingly that they were not in the national system before was that the capital requirement was too high. The states which formerly preferred the state system still prefer it. While there were 500 and more state banks in Missouri, Michigan and California of sufficient capital to organize as national banks if they had desired only twenty-seven new national banks have been formed. The same result is seen in the South, the national system has gained but little and that mostly in those states which formerly used national banks to a considerable extent.

It seems clear that the lack of profit on circulation has been a minor element in determining banks to go into the state system. Far more important is the power to loan on real estate, the ability to combine in one institution the functions of a savings bank and of a bank of discount and deposit. This is the fundamental cause for the growth of large state banks.

The future of state banking will depend on several things. In the first place, it is evident that if the profit on circulation is increased by Congressional legislation, the gain to be obtained may be sufficient to draw the larger state banks into the national system. At the present time, the increasing premium on the two per cent bonds is making note issue less profitable and it is difficult to see how, if the present plan of securing the notes by bond deposit is retained, any further changes in the law can give the banks more profit. If that system is abandoned, and a method of issu-

ing notes upon the basis of banking assets is adopted, the banks now operating under state charters may find it to their interest to give up the business of loaning on real security in order to obtain a greater gain from circulation. Whether they will do so or not will evidently depend upon the provisions of the new law. Until there are radical changes in the national bank act, the circulation privilege will not be a sufficient incentive to induce changes to the national system in the South and the more fully developed states of the West.

It seems likely that as such states as Kansas and Nebraska become less dependent on external credit for the development of their agricultural resources they will find their needs better met by banks which can loan on real estate. There are signs that this movement is in progress. In his report for 1899-1900 the Kansas Bank Commissioner says: "Believing there is no better security than a first mortgage on good Kansas land, where reasonable judgment is exercised with respect to the amount of the loan I have been disposed to favor this class of loans and have urged our banks to carry a reasonable amount of same . . . the amount of real estate loans held by our banks is gradually increasing, being $300,000 greater at this time than at the date of my last report." The time is not perhaps far distant when the large state bank will dominate the banking business in such states as fully as it does in Georgia or in Missouri.

The Act of March 14, 1900, in so far as it drew into the national system banks formerly organized under state laws, had a tendency to weaken the forces making for the better regulation of state banking. The growth of state supervision has gone *pari passu* with the increase in the number of state banks; while there were few of such institutions it was only natural that their regulation should be more or less neglected. As they have increased they have become more and more the objects of legislative attention. It is not an accident that supervision reaches its highest devel-

opment in those states where the state banks are most numerous. With a further lowering of the capital minimum, the national system would probably absorb still more of the state banks in some states. The evolution of state supervision would thus receive a set-back. The question is thus raised whether it will be advisable to bring into the national system still smaller banks. The answer must depend on what conception is entertained of the function of national banks. If it is considered desirable to have a national system of supervision for as many banks as possible and this is regarded as the primary aim of legislation there seems no good reason why the very smallest banks should not be admitted into the system.

But the national bank is not only a bank of discount and deposit, it is also a bank of issue. Up to the present time we have been able to have small banks of issue because the safety of the note has been secured by the bond deposit. Before the introduction of this method of guarantee, in none of the states were the banks of issue of small capital.[48] To permit $25,000 banks to issue a credit currency would probably be hazardous.[49]

It was the invention of the bond deposit as a security for note issue which made it possible for the small bank to become a note-issuing bank; it is the failure of a bond-secured circulation to supply the needs of the country which makes it impossible for the small bank to continue as a note-issuing bank. If the national bank is to be considered primarily as a bank of circulation, and it is to issue notes based on banking assets, the minimum capital seems already too low. It is a mistake to suppose that every bank of discount and deposit must also be a bank of issue. It is pertinent, therefore, in view of the urgent need of a reform in the method of note issue to ask why it would not

[48] They were either large independent banks, or branches of large banks.

[49] See Taylor, "The Object and Methods of Currency Reform in the United States," *Quar. Jour. Econ.*, Vol. XII, p. 307.

be best in future legislation to have a single eye to the one truly national function of the national bank and to leave to the state systems the regulation of all other banks. Already the states supervise savings banks, trust companies and such of the banks of discount and deposit as find their needs more fully met than under the national system. It has been shown in the first part of the present essay how promptly and efficiently the state legislatures have responded to the need for bank supervision. That they could be safely trusted with the control of whatever banks it was thought best to exclude from the national system is certain. The smaller banks remaining national are a hindrance to the better regulation of the banking currency; in the state systems they would give added impetus toward better state supervision.

APPENDIX

Explanatory Note.

The accompanying table, showing the number of state banks by years and states, is based on three sources of information:

I. Reports of the Comptroller of the Currency.
II. Reports by state banking officials.
III. Unofficial statements.
(a) "Homans' Bankers' Almanac and Register."
(b) "Rand and McNally's Bankers' Guide."

I. Reports of the Comptroller of the Currency.

The first official attempt to collect statistics of banking for the whole country was made in 1833 under a resolution passed by the House of Representatives on July 10, 1832. From that time until 1863, with the exception of some few years, the Secretary of the Treasury regularly included in his reports information regarding the number of state banks in the United States. In his annual report for 1863, Secretary Chase recommended the discontinuance of the practise, and no further information with regard to state banks was given in the succeeding reports of the Treasury Department. By act of Congress in 1873,[1] the Comptroller of the Currency was required to report to Congress, "a statement exhibiting under appropriate heads the resources and liabilities of the banks, banking companies and savings banks organized under the laws of the several states and territories, such information to be obtained from the reports made by such banks, banking companies and sav-

[1] Rev. Stats. of the U. S., sec. 333.

ings banks to the legislatures or officers of the different states and territories, and where such reports cannot be obtained, the deficiency to be supplied from such other sources as may be available."

Until 1887, the Comptroller included in the tables of state banks only those banks which made returns to some state official.[1] These statistics were reported to the Comptroller by the authorities in the various states. From 1887 to the present time, information has been gathered by direct correspondence, concerning banks located in states whose laws require no reports. The fullness of these returns has depended entirely on the disposition of the banks to give the information asked for. As a matter of fact only a few banks have made the reports. The statistics contained in the Comptroller's Reports, in so far as they are based on unofficial data are therefore quite incomplete.

From 1875 to 1882 the reports of the banks to the Commissioner of Internal Revenue, given as a tax return, were tabulated by the Comptroller and included in his reports. It was only in the summaries for 1880, 1881 and 1882 that the numbers of private, state and savings banks were shown by states. Since the repeal of the law imposing an internal revenue tax on banks no complete official enumeration of banks other than national has been made.[2]

II. Reports by State Officials.

The state reports are the primary source of information with regard to state banks. They are compiled from returns made by the banks under law and consequently are entirely accurate. The statistics contained in the Comp-

[1] There was a sporadic attempt in 1876 to gather information as to other banks, but it was abandoned in 1877.

[2] The internal revenue law of 1898 imposed again a tax on banks and afforded an opportunity for the compilation of a similar table, and this has ostensibly been done (Report of Comptroller of Currency, 1900, Vol. I, pp. 297-300), but in reality private and state banks are inextricably confused.

troller's reports are valuable only in so far as they are based on the state reports.

In the compilation of the accompanying tables the state reports have been used to correct and supplement the figures given by the Comptroller of the Currency in the following ways:

(1) In some cases, when official statistics as to the number of state banks were obtainable, they have not been used by the Comptroller. For example, since 1891 state banks in West Virginia have been required to make reports to the State Auditor. The number of state banks in West Virginia are thus given by the Comptroller and by the Auditor:

	Comptroller's Report.	Auditor's Report.
1891	19	42
1892	27	45
1893	45	55
1894	26	56
1895	58	58
1896	59	60
1897	66	68
1898	41	74
1899	75	75

Evidently for several of these years the Comptroller, for some reason, has not availed himself of the information collected by the state authorities, but has relied on incomplete voluntary returns. Wherever, as in this case, a discrepancy has been found between the numbers given in official state reports and those in the Comptroller's reports the former have been used.

(2) In several states the returns of private and state banks as given by the Comptroller are not separated. It has been found possible in most cases by resorting to the state reports to remedy this defect. In Mississippi, however, a few private banks are included in the number of state banks as given in the table.

(3) The Comptroller's office has pursued a varying policy with regard to the classification of stock savings banks in Iowa and Michigan. Until 1886, all banks in Michigan operating under state charters were classed as state banks but in that year they were divided into state and savings banks. Again in 1887 they were all reported as state banks, but in 1888 the division was again made and retained until 1893. Since that time the early method of classing them together as state banks has been followed. The banks of Michigan are nearly all banks of discount and deposit, many of which carry on in addition a savings bank business. Whatever classification is made of them should be a uniform one, and it has seemed most in accordance with the facts to consider them all as state banks. Consequently the numbers for 1886, 1888, 1889, 1890, 1891, 1892 given in the Comptroller's reports have not been used in the tables but the numbers given by the Bank Commissioner of Michigan for all state banks have been substituted for them. A similar situation presented itself in the case of the Iowa banks. Since 1875 savings and state banks have been classed separately by the state officials. Until 1886 they were grouped together as state banks by the Comptroller but after that time they were separated. The numbers given for the earlier years by the Comptroller have been replaced in the table by those of the State Auditor.[4]

In many cases the official reports do not separate stock savings banks and state banks.[5] The amount of this confusion may however be defined. According to "Rand and McNally's Bankers' Guide" for 1899, there were in the

[4] Since the Auditor's reports up to 1887 were biennial, returns are only obtainable for alternate years; the intervening years have been filled by taking an average of the preceding and succeeding numbers. This method of interpolation has been used in several other places in the table.

[5] This is true also of "Homans' Bankers' Almanac," the use of which in the preparation of the table is explained below.

United States in that year 1331 savings banks of all kinds. Of these, none of the mutual savings banks of the New England States, N. Y., Pa., Del. and Md., amounting to 663 banks are included in the table as state banks. Also in the following states the stock savings banks are excluded from the enumeration of state banks: Fla., Col., Iowa, La., Minn., N. C., Texas, Utah and Ill. These amount to 308 banks. So that of 1331 savings banks 360 are classed with the state banks in the table. There are very few savings banks in the Southern and Western States. The states in which the number of savings banks which cannot be separated is largest are Pa.,[6] Ohio., Mich., Wis. and Mo. In the last three states there are no distinct savings banks.[7] Many of the state banks combine the functions of savings banks and of banks for discount and deposit. To some of them the savings bank business is important, but in the greater number it is subsidiary.

III. Unofficial Statements

Even after the statistics given by the Comptroller have been supplemented and corrected as far as possible by the official state reports, there still remains a considerable number of states for the banks of which official information is lacking either for all or a part of the period 1877-1899. As has been said before, the Comptroller since 1887 has collected statistics for such states by direct communication with the banks, but he has secured returns from such a small part of the banks that the information given is of no value in determining the number of banks.

In order to fill in these gaps unofficial data have been used in the preparation of the table. Since 1873 "Homans' Bankers' Almanac and Register" has given annually the number of state banks in each state. There are reasons for believing that the numbers given by "Homans'" are ap-

[6] Stock savings banks.
[7] There is one such bank in Wisconsin.

proximately correct. They closely correspond for the years 1880, 1881, 1882 with the numbers contained in the official enumeration made by the Commissioner of Internal Revenue. The substantial accuracy of the "Homans'" statistics is also indicated by the fact that whenever a state has adopted a system of bank supervision the exact returns thus obtained show that the "Homans'" figures for previous years were very nearly correct.

The table showing the number of private banks by years and states has been made up entirely from data contained in "Homans'." Official statistics of the number of private banks can be obtained for only a few states, and with regard to those for only a short period. It has seemed best, therefore, to use throughout the unofficial information.

Number of State Banks by States for each Year from 1877 to 1899.

States.	1877	1878	1879	1880	1881	1882	1883	1884	1885	1886	1887	1888	1889	1890	1891	1892	1893	1894	1895	1896	1897	1898	1899
Maine	2	1	..	..	..	..	..	..	..	..	..	..	1	1	..	..	..	..	..	..	..	..	..
New Hampshire.	1	1	1	1	1	1	1	1	1	1	1	1	..	..	..	..	..	..	..	..	..	..	8
Vermont	5	5	5	5	6	6	8	7	8	8	..	..	..	..	..	..	..	..	..	..	..	..	..
Massachusetts	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Rhode Island	15	15	14	14	14	13	13	10	10	10	10	10	9	9	8	6	6	6	6	6	6	6	6
Connecticut	4	4	4	4	4	4	6	6	6	8	8	8	8	8	8	8	8	8	8	8	8	8	8
Total N. E. States	27	26	24	24	25	24	28	24	25	27	19	19	18	18	16	14	14	14	14	14	14	14	22
New York	81	75	71	66	70	74	82	87	92	92	102	122	145	164	176	190	201	205	213	216	213	210	207
New Jersey	12	10	10	8	7	6	7	7	9	10	8	8	13	21	22	22	22	21	21	21	21	21	21
Pennsylvania	113	106	88	88	82	81	81	79	81	79	80	77	81	82	84	82	85	80	79	83	87	90	90
Maryland	15	14	13	10	8	10	10	10	10	10	8	9	10	8	7	8	6	6	9	10	12	12	13
Delaware	a6	a7	a5	a5	b4	b4	b4	b4	b4	b4	b4	b4	b4	b4	b4	b4	b4	b4	b4	b4	b4	b4	b3
Total Eastern States	227	212	187	177	171	175	184	187	196	195	202	220	253	279	293	306	318	316	326	334	337	337	333
Virginia	a40	a46	a44	a44	a44	a44	a41	a41	a38	a35	a55	a64	67	76	93	90	90	84	b85	86	85	92	89
West Virginia	a15	a15	a15	a15	a14	a16	a17	a16	a17	a18	a25	a26	a29	a32	b42	b45	b55	b56	b58	b60	b68	b74	b75
North Carolina	a3	a5	a5	a5	a2	a4	a6	a6	a7	a9	a11	a16	20	21	29	32	33	36	36	41	45	44	45
South Carolina	4	a8	a5	a4	a2	a4	3	4	a5	a7	a15	a19	a28	a45	a57	a67	a70	a67	a68	a78	a76	a78	a81
Georgia	a27	a29	a26	a26	a21	a18	a17	a21	a21	a20	a23	a31	a47	a66	a87	a108	a111	a111	b108	b111	b114	b119	b139
Florida	..	..	..	..	..	..	a1	a1	a2	a3	a4	a4	b6	b15	b15	b11	b18	b19	b21	19	b23	b20	b23
Alabama	a6	a7	a7	a7	a6	a5	a5	a5	a8	a8	a6	a9	a20	a30	a39	a44	a40	a36	a33	a42	a40	a42	a42
Mississippi	a7	a5	a7	a6	a8	a8	a9	a8	a9	a11	a11	a15	30	47	54	55	63	55	64	75	83	86	92
Louisiana	a9	10	10	10	10	4	4	4	4	a6	a5	6	6	6	11	16	18	22	27	a38	a39	a51	50
Texas	a13	a17	a15	a14	a12	a12	a12	a14	a15	a13	9	a7	5	4	4	4	4	3	8	a6	4	3	0
Arkansas	a1	a2	a3	a3	a4	a3	a2	a3	a5	a4	a10	a13	a23	a40	a52	a61	a63	a63	a64	a82	a81	a79	a86
Kentucky	54	51	49	55	61	60	65	68	69	72	71	83	106	123	151	162	164	161	171	a167	a188	a192	a216
Tennessee	a18	a18	a17	a17	a17	a16	a15	a15	a19	a22	a37	a43	a77	a100	a117	a124	a122	a112	a113	a135	a134	a132	a139
Total Southern States	197	213	203	206	201	194	197	206	219	228	282	336	464	605	751	819	851	825	856	940	980	1012	1077

a Hoxsey's Banker's Almanac. b Official State reports. All others from reports of Comptroller of Currency.

1877 1878 1879 1880 1881 1882 1883 1884 1885 1886 1887 1888 1889 1890 1891 1892 1893 1894 1895 1896 1897 1898 1899

States.	1877	1878	1879	1880	1881	1882	1883	1884	1885	1886	1887	1888	1889	1890	1891	1892	1893	1894	1895	1896	1897	1898	1899
Ohio	44	36	33	32	29	27	29	29	38	35	46	25	48	49	64	77	86	87	95	123	131	144	155
Indiana	13	c15	18	20	19	17	17	21	27	c29	32	32	37	45	53	72	86	88	92	99	96	94	97
Illinois	a30	a34	a29	a32	a27	a27	a27	a29	a29	a30	a31	31	16	26	40	78	89	91	96	104	104	106	106
Michigan	30	26	29	26	29	28	30	30	44	a49	62	74	b90	b106	b121	b138	b159	164	171	178	179	179	188
Wisconsin	26	28	29	30	31	34	35	43	50	46	56	64	67	80	91	109	118	125	125	126	130	132	133
Iowa	b31	c32	b33	c32	b31	c40	b48	c49	b50	59	65	64	80	105	122	141	177	188	194	201	206	209	207
Minnesota	13	14	17	21	24	27	34	38	34	41	54	61	67	76	93	117	133	144	149	154	145	146	171
Missouri	a101	84	107	108	120	134	155	178	187	199	212	238	260	301	401	422	455	464	482	484	500	494	495
Total for Middle States	288	269	295	301	310	334	375	417	459	488	558	589	665	788	985	1154	1303	1351	1404	1469	1491	1504	1552
N. Dakota	..	..	..	..	..	a2	a3	a11	a18	a35	a62	a74	a102	a27	51	68	72	71	70	72	73	86	106
S. Dakota	..	..	..	..	..	..	..	..	..	..	..	..	..	a88	65	110	b82	c84	86	80	c87	b95	c95
Nebraska	a8	a8	a7	a8	a14	a18	a29	a38	a56	a80	a126	a158	a207	a292	a343	a366	a386	a377	a371	b325	b311	b314	b331
Kansas	26	23	a29	a33	a34	a31	a37	a46	54	68	149	177	c200	224	b249	281	b276	274	b287	b283	b277	b275	b299
Montana	..	..	..	..	..	..	..	a3	a3	a3	a3	a5	a6	a7	a9	a13	a14	a13	4	7	7	7	14
Wyoming	..	..	..	..	..	..	..	..	..	..	a2	a1	a1	a1	a1	3	5	6	4	5	5	5	8
New Mexico	..	..	..	..	..	..	..	..	..	..	a3	a4	a4	a4	a6	a8	a7	a8	a7	a8	a6	6	7
Colorado	a5	a4	a6	a6	a7	a6	8	8	8	8	8	c13	18	24	29	21	29	29	33	31	32	c30	28
Oklahoma	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	a9	a17	a26	29	49	b55	68
Total Western States	39	35	42	47	55	57	77	106	139	194	353	432	538	667	753	870	880	879	888	840	847	873	956
Washington	..	..	..	..	..	..	..	..	..	..	a3	a4	11	24	a59	a68	64	43	40	c36	32	c30	28
Oregon	..	..	..	..	..	1	a4	a5	a5	a5	a7	a9	a9	a17	a19	a31	a30	a28	a31	a32	a30	a30	a34
California	a43	56	60	58	56	a61	67	74	73	75	88	110	122	131	144	161	173	171	173	174	173	176	176
Idaho	..	..	..	..	..	..	..	..	..	..	a3	a3	a3	a5	a6	a9	a10	a8	a9	a11	a11	a10	a12
Utah	..	..	..	..	..	..	..	..	..	..	a2	a2	1	2	9	11	5	a12	a13	a13	8	8	a11
Nevada	a2	a4	a3	a3	a2	a2	a5	a3	a4	a2	a3	a3	a3	a7	a8	a5	a5	a5	a5	a7	a7	a7	a7
Arizona	..	..	..	..	..	..	..	..	..	..	a6	a5	a6	a9	a8	a9	a9	a10	a8	7	7	7	a7
Total Pacific States	45	60	63	61	58	64	76	82	82	82	112	136	155	195	253	294	296	277	279	280	268	268	275
Total for United States	823	815	814	816	820	848	937	1022	1120	1214	1526	1732	2093	2552	3051	3457	3662	3662	3767	3877	3937	4008	4215

a Homan's Banker's Almanac. *b* Official State reports. *c* Average of preceding and succeeding years.

All others from reports of Comptroller of Currency.

Number of Private Banks by States for each Year from 1877 to 1899.

States.	1877	1878	1879	1880	1881	1882	1883	1884	1885	1886	1887	1888	1889	1890	1891	1892	1893	1894	1895	1896	1897	1898	1899
Maine	8	8	8	9	11	11	11	10	12	14	15	12	13	13	15	15	13	10	11	8	8	8	8
New Hampshire.	2	3	4	4	4	3	1	3	3	3	3	3	6	5	4	4	4	3	2	2	2	2	2
Vermont	1	4	3	3	3	2	1	2	3	2	2	2	2	3	4	4	4	3	2	1	1	1	1
Massachusetts	52	58	62	70	70	67	75	69	71	71	77	74	77	77	73	72	75	72	79	162	165	166	160
Rhode Island	5	5	5	5	6	7	6	8	8	7	7	7	8	10	11	11	11	10	9	5	5	6	11
Connecticut	14	18	15	18	16	19	16	22	21	19	28	19	19	23	21	22	21	22	22	19	20	18	16
Totals	82	96	97	109	110	109	110	114	118	116	132	117	125	131	128	128	128	120	125	197	201	201	198
N. Y. (State)	201	193	198	184	182	186	179	168	160	163	172	179	168	168	163	163	164	153	149	138	138	139	136
N. Y. (City)	88	102	69	68	69	65	68	66	67	75	74	77	77	178	175	179	167	176	328	182	180	182	310
New Jersey	10	8	8	6	6	7	6	6	6	6	6	6	7	7	5	6	7	8	8	5	5	5	4
Pennsylvania	306	316	295	285	269	294	260	247	233	247	243	243	246	248	269	268	260	233	221	308	311	302	316
Maryland	23	23	20	21	22	27	32	38	16	37	19	19	23	21	37	36	46	52	34	10	10	11	43
Delaware	3	7	3	3	3	3	4	4	3	3	3	3	3	3	3	3	3	3	4	3	3	3	4
Totals	631	649	593	567	551	582	549	529	485	531	517	527	524	625	652	655	647	625	744	646	647	642	813
Virginia	30	26	32	33	33	34	41	42	6	42	28	30	30	31	33	29	31	31	28	29	28	32	27
W. Virginia	8	11	11	7	5	5	6	5	15	5	3	3	5	4	6	9	9	23	10	6	6	5	4
N. Carolina	9	10	8	9	12	11	17	14	22	16	18	23	24	26	25	22	21	25	25	24	26	27	24
S. Carolina	19	23	22	18	15	20	19	20	22	21	24	22	27	31	31	33	33	30	26	21	20	26	19
Georgia	39	47	45	40	50	57	58	67	68	64	70	71	60	53	55	52	56	53	63	40	41	43	42
Alabama	17	23	23	23	27	32	35	36	39	44	49	49	51	46	47	43	41	37	41	34	31	33	34
Mississippi	21	18	24	25	23	21	21	22	18	17	15	15	17	16	16	14	14	12	11	4	4	4	5
Louisiana	7	9	9	8	10	13	13	15	15	15	14	14	10	18	15	15	15	13	12	6	6	6	8
Texas	73	78	79	85	98	124	123	122	116	112	122	130	138	148	145	127	133	128	131	153	147	165	187
Tennessee	10	13	14	14	14	15	15	15	18	18	19	20	20	24	35	30	32	33	29	7	8	6	9
Kentucky	36	36	30	30	31	33	35	34	36	32	39	36	43	49	42	42	43	42	37	22	21	25	32
Arkansas	12	11	10	9	10	14	19	19	17	18	18	20	30	27	22	19	19	15	18	11	12	14	14
Florida	8	9	8	7	7	9	9	17	19	10	27	27	24	23	19	20	22	22	19	11	12	13	11
Totals	289	314	315	308	335	388	411	428	411	414	446	460	479	496	491	455	469	464	450	368	362	399	416

Number of Private Banks by States for each Year from 1877

NUMBER OF PRIVATE BANKS BY STATES FOR EACH YEAR FROM 1877 TO 1899.—Continued.

States.	1877	1878	1879	1880	1881	1882	1883	1884	1885	1886	1887	1888	1889	1890	1891	1892	1893	1894	1895	1896	1897	1898	1899
Ohio	219	235	225	227	231	234	237	243	239	238	243	250	254	264	271	263	265	253	245	262	260	268	287
Indiana	111	119	118	113	114	122	134	135	126	124	149	156	170	177	181	187	197	182	180	204	209	213	222
Illinois	282	295	305	321	331	337	374	394	394	405	432	441	455	449	511	535	548	541	540	567	560	562	599
Michigan	131	140	138	140	151	159	174	184	192	197	217	220	228	232	227	222	224	219	218	236	235	241	249
Wisconsin	70	75	73	80	88	94	97	103	104	107	114	102	119	110	104	110	110	100	108	106	104	111	120
Minnesota	49	51	58	60	89	95	124	129	129	137	145	152	163	172	182	166	175	177	175	204	205	214	239
Iowa	201	232	252	264	289	380	353	373	383	388	411	423	456	485	482	478	474	460	464	477	477	490	519
Missouri	104	107	105	83	94	96	97	128	111	132	129	122	141	152	143	124	139	131	130	114	107	107	110
Totals	1167	1254	1274	1288	1387	1517	1590	1689	1678	1728	1840	1866	1986	2041	2101	2085	2132	2063	2060	2170	2157	2206	2345
N. Dakota	8	10	10	10	31	48	97	136	140	162	183	196	205	62	38	30	19	14	14	0	0	1	2
S. Dakota	..	..	..	..	..	..	..	..	..	..	..	..	..	146	127	66	64	58	48	48	47	52	57
Nebraska	30	36	43	60	92	113	140	147	185	229	278	306	297	244	192	165	155	143	132	81	79	74	65
Kansas	84	75	90	108	137	160	194	211	247	303	353	365	343	327	253	208	190	171	148	113	118	96	81
Montana	5	7	6	8	11	12	17	15	14	13	10	11	15	16	22	19	19	14	16	18	17	17	21
Wyoming	5	6	5	5	5	5	9	9	9	9	12	12	10	10	11	9	9	8	9	8	9	12	12
Colorado	25	23	22	25	50	49	51	47	43	53	65	69	73	70	58	56	58	44	50	52	55	48	55
New Mexico	4	5	5	7	10	13	20	16	13	11	10	10	9	9	8	4	5	4	4	5	5	5	7
Oklahoma	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	11	23	19	21	20	4	1
Totals	161	162	181	223	336	400	528	581	651	780	911	969	952	884	709	527	530	479	440	346	350	309	301
Washington	2	4	3	2	8	14	11	10	10	11	11	14	34	36	38	35	31	9	17	15	17	19	24
Oregon	6	7	7	8	9	14	16	21	22	21	22	21	25	22	24	24	26	20	17	13	15	16	20
California	65	72	48	39	41	49	51	47	46	50	48	52	55	37	43	32	35	32	35	28	30	31	29
Idaho	3	3	4	5	4	8	11	13	11	13	16	16	13	11	13	12	12	10	15	11	11	13	9
Utah	7	7	8	9	9	11	12	11	9	8	8	8	9	13	21	11	11	10	12	13	13	13	11
Nevada	18	16	13	13	7	11	10	13	11	13	11	10	8	6	7	6	5	7	6	3	3	3	2
Arizona	1	2	2	2	2	4	7	2	4	4	4	4	5	3	3	4	5	5	3	..	..	1	..
Totals	102	111	85	78	80	111	118	117	113	120	120	125	149	128	149	124	125	93	105	83	89	96	95
Total for United States	2432	2586	2545	2578	2799	3107	3306	3458	3456	3689	3966	4064	4215	4305	4230	3974	4031	3844	3924	3810	3806	3853	4168